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PART I

FEDERAL REGISTER

VOLUME 22 NUMBER 252

Washington, Tuesday, December 31, 1957

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

Subchapter M—International Traffic in Arms

[Departmental Reg. 108.354]

MISCELLANEOUS AMENDMENTS

The regulations of the Secretary of State, issued August 26, 1955, as amended May 24, 1956, November 14, 1956, August 30, 1957, September 30, 1957, November 29, 1957, and December 27, 1957, are amended as follows:

PART 121—ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

1. Section 121.21 is amended to read:

§ 121.21 *United States Munitions List.* Pursuant to the authority cited *supra* the following articles are hereby designated as arms, ammunition, and implements of war.

CATEGORY I—SMALL ARMS AND MACHINE GUNS

(a) Rifles, carbines, revolvers, pistols, machine pistols and machine guns using ammunition of caliber .22 or over, except weapons using only caliber .22 rim-fire ammunition. (See also § 121.23.)

(b) All components and parts for machine guns and fully automatic rifles. Barrels and breech mechanisms for rifles, carbines, pistols and revolvers.

(c) Ammunition belting machines for machine guns.

(d) Firearm silencers.

CATEGORY II—ARTILLERY AND PROJECTORS

(a) Guns, howitzers, cannon, mortars, tank destroyers, rocket launchers, military flame throwers, military smoke projectors, and recoilless rifles.

(b) Components and parts, including but not limited to mounts and carriers.

CATEGORY III—AMMUNITION

(a) Ammunition of caliber .22 or over for the arms enumerated in Categories I and II hereof, except caliber .22 rim-fire ammunition.

(b) The following components, parts, accessories, and attachments: cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun), projectiles, boosters, percussion caps, fuses or fuzes and components thereof, primers, and other detonating devices for such ammunition.

This issue includes two parts bound together. Part II contains a republication of 46 CFR Part 299, Federal Maritime Board, Maritime Administration, Department of Commerce.

CATEGORY IV—BOMBS, TORPEDOES, ROCKETS, MINES, AND GUIDED MISSILES

(a) Bombs, torpedoes, grenades (including smoke grenades), smoke canisters, rockets, guided missiles, depth charges, chemical and incendiary bombs.

(b) Apparatus and devices for the handling, control, activation, discharge, detonation or detection of items enumerated in paragraph (a) of this category, including *inter alia* the following components and parts: fuses or fuzes and components thereof; bomb racks and shackles; bomb shackle release units; bomb ejectors; torpedo tubes; torpedo and guided missile boosters; launching racks and projectors; control mechanisms and control systems; pistols (exploders); igniters; fuze or fuse arming devices; and the following items related thereto: intervalometers and components thereof; bomb lift trucks; bomb and torpedo handling trucks; trailers, hoists, and skids for handling bombs; guided missile launchers, and specialized handling equipment.

(c) Land and naval mines and equipment for the laying, detection, detonation, and sweeping of mines. Components, parts, attachments, and accessories specifically designed for mine laying, mine detection and detonation, and mine sweeping equipment.

(d) Missile power plants and components and parts specifically designed therefor.

CATEGORY V—FIRE CONTROL EQUIPMENT AND RANGE FINDERS

(a) Fire control, gun and missile tracking and guidance, infrared, and other night-sighting equipment; range, position, and height finders, and spotting instruments; aiming devices (electronic, gyroscopic, optic, and acoustic); bomb sights; bombing computers, military television sighting units, inertial platforms; gun sights, and periscopes for the articles enumerated throughout this List.

(b) Components, parts, accessories, and attachments specifically designed for the articles enumerated in paragraph (a) of this category.

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FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

CATEGORY VI—TANKS AND ORDNANCE VEHICLES

(a) Tanks;

(b) Military type armed or armored vehicles, and vehicles fitted with mountings for arms and other specifically designed military vehicles;

(c) Military half tracks;

(d) Military type tank recovery vehicles;

(e) Gun carriers;

(f) Trailers specifically designed to carry ammunition;

(g) Amphibious vehicles (See § 121.24);

(h) All specifically designed components, parts and attachments for the foregoing;

(i) Military mobile repair shops specifically designed to service military equipment.

CATEGORY VII—TOXICOLOGICAL AGENTS

(a) Chemical agents, including tear gas (See § 121.25);

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals or to damage crops;

(c) Equipment for the dissemination, detection, and identification of, and defense against, the items in paragraphs (a) and (b) of this category;

(d) Components, parts, attachments, and accessories specifically designed for the equipment described in paragraph (c) above.

CATEGORY VIII—PROPELLANTS, EXPLOSIVES AND INCENDIARY AGENTS

(a) Propellants for the articles enumerated in Categories III and IV hereof (See § 121.26);

(b) Military high explosives (See § 121.26);

(c) Military fuel thickeners (See § 121.26);

(d) Military pyrotechnics, including projectors therefor.

CATEGORY IX—VESSELS OF WAR AND SPECIAL NAVAL EQUIPMENT

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels, service craft, floating dry docks, and experimental types of naval ships. Turrets and gun mounts, missile systems, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments and accessories specifically designed for the following types of combatant vessels: battle ships, command ships, guided missile ships, cruisers, aircraft carriers, destroyers, frigates, escorts, and submarines. (See § 121.27)

(b) Submarine and torpedo nets. Components, parts, attachments and accessories specifically designed for these articles.

(c) Harbor entrance magnetic pressure acoustic detection devices, controls and components thereof.

CATEGORY X—AIRCRAFT

(a) Aircraft and airborne equipment (See § 121.5);

(b) All components, parts and accessories for aircraft. This does not include ground handling and maintenance equipment or bulk materials, such as dopes, paints, oils, cable, wire, tubing, hose, and aluminum sheets.

(c) Miscellaneous equipment used with aircraft, as follows:

(1) Catapults and cartridge-actuated devices utilized in emergency escape of personnel from aircraft;

(2) Pressurized breathing equipment and partial pressure suits for use in aircraft, anti "G" suits, military crash helmets, aircraft liquid oxygen converters, complete parachutes utilized for personnel, cargo, or deceleration purposes and complete harnesses and platforms therefor. Components and parts specifically designed for such articles.

(3) Aircraft landing mats, launching and recovery equipment.

CATEGORY XI—MILITARY ELECTRONICS

(a) Electronics equipment specially designed for military use, including equipment specially designed for altitudes above 50,000 feet or at temperatures of 500° centigrade or above;

(b) Radar of all types;

(c) Electronic countermeasure and jamming equipment;

(d) Military underwater sound equipment;

(e) Military communications-electronics equipment bearing a military designation;

(f) Electronic navigation and location-finding aids (see § 121.28);

(g) Radio distance measuring systems such as Shoran; and hyperbolic grid systems, such as Raydist, Loran, and Decca;

(h) Components, parts, accessories and attachments specifically designed for use with equipment enumerated above (see also § 121.29).

CATEGORY XII—PHOTOGRAPHIC EQUIPMENT

Aerial cameras and special purpose military cameras and specialized processing equipment therefor; military photointerpretation, stereoscopic plotting and photogrammetry equipment.

CATEGORY XIII—SPECIAL ARMORED EQUIPMENT

(a) Armor plate;

(b) Armored railway trains;

(c) Military steel and nylon helmets;

(d) Body armor and flak suits, and components and parts specifically designed for such articles.

CATEGORY XIV—SPECIALIZED MILITARY TRAINING EQUIPMENT

(a) Specialized military training equipment (See § 121.30);

(b) Components, parts, attachments, and accessories specifically designed for such equipment.

CATEGORY XV—HELIUM GAS

CATEGORY XVI—MISCELLANEOUS ARTICLES

(a) Cryptographic devices (encoding and decoding);

(b) Self-contained diving and underwater swimming apparatus and components and auxiliary equipment specifically designed therefor;

(c) Protective clothing for guided missile fuel handling.

CATEGORY XVII—CLASSIFIED MATERIAL

All material not enumerated herein which is classified from the standpoint of military security.

CATEGORY XVIII—TECHNICAL DATA

Unclassified technical data relating to the articles herein designated as arms, ammunition, and implements of war.

2. Sections 121.22 through 121.28 are deleted and replaced by the following sections:

INTERPRETATIONS

AUTHORITY: §§ 121.22 to 121.30 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR, 1954 Supp.

INTERPRETATIONS

§ 121.22 *Forgings, castings, and machine bodies.* Items in a partially completed state, such as forgings, casting, extrusions, and machined bodies of any of the articles enumerated in the United States Munitions List which have

reached a stage in manufacture where they are clearly identifiable as arms, ammunition, and implements of war are so considered for the purposes of Section 414 of the Mutual Security Act.

§ 121.23 *Small arms.* Category I does not include shotguns, air-rifles or muzzle-loading guns, blunderbusses and stud drivers.

§ 121.24 *Amphibious vehicles.* As used in Category VI (g), the term "amphibious vehicles" includes but is not limited to, automotive vehicles or chassis embodying all-wheel drive and equipped, to meet special military requirements, with adaptation features for deep-water fording and sealed electrical systems.

§ 121.25 *Chemical agents.* (See Category VII.) The term "chemical agents" includes but is not limited to: cyanogen chloride, hydrogen cyanide, diphosgene, fluorine (but not fluorene), Lewisite gas, mustard gas (dichlorodiethyl sulfide), phenylcarbylamine chloride, phosgene, Chloracetophenone, phenyl chlomethyl hetone, adamsite (diphenylaminochloroarsine), dibromodimethyl ether, dichlorodimethyl ether, diphenylchloroarsine, diphenylcyanarsine, ethyldibromoarsine, ethyldichlorarsine, methyldichloroarsine, phenyldibromoarsine, phenyldichloroarsine, cyanodimethylaminoethyloxyphosphine oxide, fluoroisopropoxymethylphosphine oxide, fluoromethylpinaeolyloxyphosphine oxide, and related compounds.

§ 121.26 *Propellants, explosives, and incendiary agents.* (See Category VIII.)

(a) The term "propellants" includes but is not limited to the following:

Hydrazine.
Unsymmetrical dimethylhydrazine.
Hydrogen peroxide over 85 percent concentration.
Nitroguanadine or picrite.
Nitrocellulose with nitrogen content of over 12.20 percent.
Other solid propellant compositions, including but not limited to the following:
(1) Single base (nitrocellulose).
(2) Double base (nitrocellulose, nitroglycerin).
(3) Triple base (nitrocellulose, nitroglycerin, nitroguanadine).
(4) Composite (nitroglycerin, ammonium perchlorate, nitrocellulose with plastics or rubbers added).
(5) Special purpose chemical base high energy solid military fuels.
Other liquid propellant compositions, including but not limited to the following:
(1) Mono-propellants (hydrazine, nitrate, and water).
(2) Bi-propellants (hydrazine-fuming nitric acid (HNO_3)).
(3) Special purpose chemical base high energy liquid military fuels.

(b) The term "military high explosives" includes but is not limited to one or more of the following materials or mixtures with various powdered metals: ammonium picrate, black soda powder, postassium nitrate powder, hexanitrodiphenylamine, ammonium perchlorate, nitrocellulose, nitrostarch, nitroglycerin, pentaerythritol tetranitrate, (penthrite, pentrite or PETN), trinitrophenylmethyl-nitramine (tetryl), trinitrophenol (picric acid), ethylenedinitramine, cyclotrimethylene-trinitramine, (RDX, Cyclonite, Hexogen or T4), cyclotetramethylene-tetranitramine (HMX), hexanitrodiphenylamine, trinitroanisol, trinitronaphthalene, dinitronaphthalene, tetranitronaphthalene, trinitrotoluene (TNT), and trinitroxylene. Explosive mixtures or devices which are not listed above but which contain minor quantitites of the types of explosives listed here are not considered to be arms, ammunition, and implements of war.

(c) The term "military fuel thickeners" includes: compounds (e. g., octal) or mixtures of such compounds (e. g., napalm) specifically formulated for the purpose of producing materials which, when added to petroleum products, provide a jell-type incendiary material for use in bombs, projectiles, flame throwers or other implements of war.

§ 121.27 *Vessels of war and special naval equipment.* (See Category IX). The term "vessels of war" includes but is not limited to the following:

(a) *Combatant vessels and craft.*
(1) *Warships.*
Battleships (BB, BBG).
Command ships (CBC, CLC).
Cruisers (CA, CAG, CB, CL, CLAA, CLG, CG, CG (N).
Aircraft carriers (CVA, CVA (N), CVE, CVHE, CVL, CVS).
Destroyers (DD, DDC, DDE, DDG, DDR, DL, DLG).
Submarines (SS, SS (N), SSG, SSK, SSR, SSR (N), SST, ASSA, ASSP, AK (SS), AP (SS)).
(2) *Amphibious warfare vessels.*
Amphibious force flagship (AGC).
Attack cargo ship (AKA).
Transports (APA, APD).
Assault helicopter aircraft carrier (CVHA).
Control escort vessel (DEC).
Inshore fire support ship (IFS).
Landing ships (LSSL, LSD, LSM, LSMR, LST, SLFF, LSIL, LSV).
Amphibious assault ship (LPH).
(3) *Landing craft.* (LCI, LCT-A, LCC, LCM, LCU, LCVP, LVT, LVT-A, LCPL, LCPR).
(4) *Mine warfare vessels.*
Minelayers (DM, MMF, MMA, MMC, MM).
Minesweepers (IMS, MSA, MSC (O), MSC, MSF, MSO).
Mine warfare command and support ship (MCS).
Mine hunter (MRC).
(5) *Patrol vessels.*
Escort vessels (DE, DEC, DER, PCE, PCER, PCEC, PF).
Submarine chasers (PC, PCE, SC).
Gunboats (PR, PGM).
Converted yachts (PY).
Motor torpedo boat (PT).
(b) *Naval auxiliary and service vessels and craft.*
(1) Tenders (AD, AGP, ARST, AS, AV, AVP, YDT).
(2) Logistic support ships (AE, AF, AK, AKS, AO, AOG, AOR, AO (SS), AVS).
(3) Repair, salvage and rescue vessels (AR, ARB, ARG, ARH, ARI, ARS, ARSD, ARV, ARVA, ARVE, ASR).
(4) Floating dry docks, cranes, and associated workshops and lighters (AB, AFDB, AFDL, AFDM, ARD, YD, YFD, YFMD, YR, YRDM, YRDM, YRL, YSD).
(5) Degaussing vessel (ADG).
(6) Icebreaker (AGB).
(7) Survey ships (AGS, AGSC).
(8) Cable repairing or laying ship (ARC).
(9) Tugs (ATA, ATF, ATR, YTB, YTL, YTM).
(10) Net laying and tending ships (AKN, AN, YNG).
(11) Transports and barracks vessels (AP, APB, APC, APL, YHB, YRB, YRBM).
(12) Miscellaneous cargo ships (AKD, AKL, AKV).
(13) Auxiliary submarine (AG(SS)).
(14) Distilling ship (AW).
(15) Utility aircraft carrier (OVU).
(16) Minecraft (MSB, MSI, XMAP, YMP, YMS).
(17) Patrol craft (PT, YP, PYC).
(18) Ocean radar station ship (YAGR).
(19) Advanced base aviation ship (AVB).
(20) Guided missile ship (AVM).
(21) Naval barges and lighters (AVC, YC, YCF, YCK, YCV, YF, YFN, YFNB, YFNG, YFNX, YFP, YFR, YFRN, YFRT, YFT, YG, YGN, YO, YOG, YOGN, YON, YOS, YPK, YRL, YSR, YTT, YVC, YW, YWN, YFB).
(22) Target and Training Submarine (SST).
(23) Submersible craft (X).
(24) Naval dredge (YM).
(25) Floating pile drive (YPD).
(26) Drone aircraft catapult control craft (YV).
(27) Miscellaneous auxiliary (AG, IX, YAG).
(c) *Coast Guard patrol and service vessels and craft.*
(1) Submarine repair and berthing barge (YRB).
(2) Labor transportation barracks ship (APL).
(3) Coast Guard cutter (CGC).
(4) Gun boat (WPG).
(5) Patrol craft (WPC, WSC, WPG).
(6) Sea plane tender (WAVP).
(7) Ice breaker (WAGB).
(8) Cargo ship (WAK).
(9) Buoy tenders and boats (WAGL, WD).
(10) Cable layer (WARC).
(11) Lightship (WAL).
(12) CG tugs (WAT, WXT).
(13) Radio ship (WAGR).
(14) Special vessel (WIX).
(15) Auxiliary vessels (WAG, WAGE).
(16) Other Coast Guard patrol or rescue craft over 300 horsepower capacity.
(d) *Air Force craft.* Air Force crash rescue boat.
(e) *Army vessels and craft.*
(1) Transportation Corps tug-100 ft. (LT), 65 ft. (ST), T-boat, Q-boat, J-boat, B-boat.
(2) Barges (BG, BC, BR, BK, BSP, BSPI, BKI, BCF, BBL, BARC).
(3) Cranes, floating (BD).
(4) Dry dock, floating (FDL).
(5) Repair ship, floating (FMS).
(6) Trainer, amphibious 20 ton wheeled tow boat, inland waterway (LTI, STI).

§ 121.28 *Electronic navigation and location-finding aids.* In Category XI (f), the term "electronic navigation and location-finding aids" includes but is not limited to military radio direction-finding and doppler navigational equipment, gyro-magnetic and slaved-gyro compasses and heading reference systems; automatic astro compasses; star trackers; and remote sighting and photo-electric sextants.

§ 121.29 *Cathode ray tubes—quartz crystals.* Cathode ray tubes or quartz crystals are subject to the licensing jurisdiction of the Secretary of State only when intended for use with military electronics equipment and shipped with such items.

§ 121.30 *Specialized military training equipment.* (See Category XIV.) The term "specialized military training equipment" includes but is not limited to, link type trainers, attack trainers, operational flight trainers, radar target trainers, radar target generators, gunnery training devices, anti-submarine warfare trainers, flight simulators, radar trainers, instrument flight trainers, navi-

gation trainers, target equipment, drones and drone power plants, armament trainers, pilotless aircraft trainers, and mobile training units.

PART 123—LICENSING CONTROLS

Part 123 is revised to read as follows:

LICENSE PROCEDURES

COUNTRY OF DESTINATION

SHIPMENTS FOR THE UNITED STATES GOVERNMENT

EXEMPTION FOR ARMS AND AMMUNITION SHIPMENTS

EXEMPTIONS FOR AIRCRAFT SHIPMENTS

MISCELLANEOUS EXEMPTIONS

MISCELLANEOUS PROVISIONS

AUTHORITY: §§ 123.1 to 123.82 issued under sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR, 1954 Supp.

LICENSE PROCEDURES

§ 123.1 *Application for license.* Persons who intend to export from or import into the United States, its territories or possessions any of the articles enumerated in the United States Munitions List shall make application for license to the Department of State on the forms prescribed by it unless an exemption from these requirements is authorized by this part. No such exports or imports shall be made until the application has been approved and the license issued. Applications for license to export helium gas should show the quantity to be exported in terms of cubic feet; the approximate net value of the helium gas; the number and type of containers and the approximate gross weight. Applications for written authorization from the Department of State to export technical data are required in accordance with the provisions of §§ 125.1–125.4 of this chapter.

§ 123.2 *Export licenses.* Licenses to export articles on the United States Munitions List including helium gas and related unclassified technical data must be applied for on form DSP–5. The Department of State will not issue export licenses if a proposed exportation is not considered to be in furtherance of the security and foreign policy of the United States. Prior to the issuance of an export license, the Department of State may also require documentary evidence pertinent to the proposed transaction. Licenses are applicable only to articles physically within the territorial jurisdiction of the United States.

§ 123.3 *Import licenses.* Licenses to import articles on the United States Munitions List must be applied for on form DSP–38. The Department of State will not issue import licenses if a proposed importation is not considered to be in furtherance of the security and foreign policy of the United States. Prior to the issuance of an import license, the Department of State may also require documentary evidence pertinent to the proposed transaction.

§ 123.4 *Intransit licenses.* (a) When articles are to be moved in transit through the United States, its territories or possessions, an intransit license must be obtained, except as provided in paragraphs (b) and (c) of this section, and an application for license must be submitted on form DSP–61. The Department of State will not issue intransit licenses if the proposed shipment is not considered to be in furtherance of the security and foreign policy of the United States.

(b) Collectors of customs are authorized on presentation of satisfactory evidence, to permit arms, ammunition, and implements of war to enter or leave the United States without the presentation of an import, export or intransit license if such articles are consigned from any place in a foreign country whose territory is contiguous to that of the United States to any other place in the same country.

(c) Collectors of customs may permit intransit shipments of sporting arms and ammunition, and of pistols and revolvers not larger than caliber .38, to enter and leave the United States without a license if such shipments are valued at not more than $300.

§ 123.5 *Validity and terms of licenses.* Licenses are valid for six months from the date of issuance unless a different period of validity is stated thereon. No extensions may be granted on licenses which have expired or are about to expire. If shipment cannot be made during the period of validity of a license, a new license may be applied for to authorize its exportation or importation. Licenses are not transferable and are subject to revocation, suspension or revision without notice. Licenses which have expired or have been revoked must be returned immediately to the Department of State.

§ 123.6 *Amendments and alterations.* No amendment or alteration of a license may be made except by the Department of State, or by collectors of customs or postmasters when specifically authorized to do so by the Department of State.

§ 123.7 *Ports of exit or entry.* Applications for license should show the proposed port or ports of exit or entry in the United States. If, subsequent to the issuance of a license, shipping arrangements necessitate a change of port, no amendment of the license is necessary but the Department of State should be notified of the change.

§ 123.8 *Licenses filed with collectors of customs.* (a) Prior to exportation or importation, export or import licenses shall be filed with the collector of customs at the port through which the shipment is being made. Shipper's export declarations (United States Department of Commerce Form 7525–V) must also be filed with and authenticated by the collector before the commodities are exported. (See also § 123.10.)

(b) Photostatic copies of licenses shall not be made unless specifically authorized by the Department of State on the face of the license or in a letter.

§ 123.9 *Shipper's export declaration.* The shipper's export declaration (United States Department of Commerce Form 7525–V), covering arms, ammunition, and implements of war for which an export license is required, must contain the same information in regard to the description, destination, and value of the articles to be exported as that which appears on the application for license. If the person designated on the export declaration as the actual shipper of the goods is not the person to whom the export license has been issued by the Department of State, the name of this shipper should appear on the export license as that of the consigner in the United States.

§ 123.10 *Shipment by mail.* Export licenses for articles which are being transported by mail shall be filed with the postmaster at the post office where the article is mailed. Import licenses shall be filed with the collector of customs at the port of entry. (See also § 123.8.)

§ 123.11. *Foreign trade zones.* For the purpose of this part, a foreign trade zone of the United States is considered an integral part of the United States. Accordingly, persons who intend to ship articles into a foreign trade zone of the United States, established pursuant to the Foreign Trade Zones Act (48 Stat. 998–1003; 19 U. S. C. 81a–81u, as amended) shall submit an application for import license described in § 123.1 and obtain a license prior to the entry

of such articles into the zone. Persons who intend to ship such articles from a foreign trade zone to a foreign destination, shall submit an application for export license, as described in § 123.1 and obtain a license prior to shipment. The provisions of § 123.4 with respect to intransit licenses are applicable to intransit shipments through a foreign trade zone.

§ 123.12 *Export of vessels of war.* (a) The transfer of a vessel of war, as defined in § 121.27 of this chapter, from United States registry to foreign registry or the registration of an undocumented vessel of war under a foreign flag is considered an exportation for which an approval or license from the Secretary of State is required. If the vessel to be exported is physically located in the United States, an export license must be obtained. If the vessel is located abroad, the Department's written approval in the form of a letter must be obtained prior to its transfer of registry.

(b) The provisions of this part shall be considered as binding in addition to the provisions of the United States Shipping Act of 1916, as amended (46 U. S. C. 835). United States Maritime Administration approval is required prior to the sale and/or transfer to alien ownership, registry, and/or flag of vessels of war. United States registry of a documented vessel is cancelled under the regulations of the United States Maritime Administration where such vessel is sold to a purchaser for use under foreign registry.

§ 123.13 *Repairs or alterations of vessels.* Operators of foreign vessels entering the territorial waters of the United States for repairs or alterations shall obtain an export license for articles enumerated in the United States Munitions List, which are required in connection with such repairs or alterations.

COUNTRY OF DESTINATION

§ 123.21 *Country of ultimate destination.* (a) The country designated on an application for export license as the country of ultimate destination must be the country wherein the articles being exported are to be used or consumed, not a country receiving the shipment in transit. If it is the intention of the exporter that the articles being exported and consigned to one country are to be transshipped to another country or to pass through the hands of an intermediate consignee, all facts relevant to such action must be clearly indicated on the license application.

(b) United States Munitions List articles which have been exported from the United States may not be sold, diverted, transferred, transshipped, reshipped or re-exported to, or used in, any of the countries named in § 123.22 without the specific prior approval of the Department of State.

§ 123.22 *Shipments to or from certain countries.* The exemptions provided by §§ 123.51 to 123.72 do not apply to shipments destined for or originating in the Soviet Union, Soviet bloc countries, Communist China, North Korea, and that part of Viet-Nam which lies north of the 17th parallel and any of the territories of free Viet-Nam or Laos which are under de facto control of the Communists, or any other area that may come under Communist control.

§ 123.23 *Canadian shipments.* (a) Collectors of customs may release shipments of arms, ammunition, and implements of war to or from Canada without a license or UAC Release Certificate.

(b) The provisions of paragraph (a) of this section do not apply to intransit shipments through the United States to or from Canada or to intransit shipments through Canada to or from the United States.

(c) The provisions of paragraph (a) of this section do not apply to shipments of helium gas. Applications for license to export helium gas to Canada shall be made in accordance with the provisions of §§ 123.1 and 123.2.

§ 123.24 *Exportation of arms, ammunition, and implements of war to Cuba.* In the case of a proposed export of United States Munitions List articles to Cuba, the application for license should be transmitted to the Cuban Embassy in Washington by the applicant. If the Cuban Embassy approves of the proposed export, it will place a stamp of approval thereon and forward it to the Department of State.

§ 123.25 *Exportation of arms, ammunition, and implements of war to Honduras and Nicaragua.* In the case of a proposed export of United States Munitions List articles to Honduras or Nicaragua, the applicant should transmit the application to the Department of State. Prior to or coincident with the submission of the application, the applicant should advise the Honduran or Nicaraguan Embassy in Washington as the case may be that such an exportation is proposed.

§ 123.26 *United States territories.* The territories of the United States (Alaska, Hawaii, Puerto Rico, and the Virgin Islands) are considered an integral part of the United States and, therefore, export and import licensing controls do not apply to shipments between those territories and the Continental United States. Licenses are required on shipments between the territories and foreign countries.

§ 123.27 *Declaration of Destination.* Some countries require the United States importer to produce evidence that the importation has been approved by the United States Government and that the shipment will not be diverted to a different country. The Declaration of Destination on Foreign Exports of Munitions Items to the United States, Form DSP–53, may be used to provide the exporting country with such evidence. When signed by an officer of the Department of State and bearing the Department's seal impression, the Declaration may be used as evidence to the exporting country that the United States importer has advised the United States Government under warranty of his intention of effecting the proposed importation into the United States and of not diverting or transshiping the material en route to the United States. Since it is the practice of the Department of State not to endorse the Declaration form until a United States import license is issued, the completed Declaration could also serve as evidence to the exporting country that the United States Government has approved the proposed importation.

SHIPMENTS FOR THE UNITED STATES GOVERNMENT

§ 123.40 *Shipment by or to the United States Government.* The exportation or importation of arms, ammunition, and implements of war by the United States Government is not subject to the provisions of section 414 of the Mutual Security Act. A license to import and export such articles is not required, therefore, when all aspects of the transaction are handled by a United States Government agency. A license is ordinarily required, however, when a private individual or firm is involved in any aspect of the transaction.

§ 123.41 *Aircraft parts and components to Armed Services.* Collectors of customs are authorized to permit the exportation of aircraft spare parts and components without a license on presentation of satisfactory evidence that the shipment is being made to the United States Armed Services abroad.

EXEMPTION FOR ARMS AND AMMUNITION SHIPMENTS

§ 123.51 *Antique arms and implements of war.* Collectors of customs are authorized on presentation of satisfactory evidence to permit the entry or departure without a license of antique arms and implements of war, components, parts, accessories, and attachments therefor, which are over one hundred years old (subject to the provisions of § 123.22).

§ 123.52 *Arms carried on person or in baggage.* Collectors of customs are authorized to permit rifles, carbines, revolvers, pistols, and ammunition therefor, to enter the United States or depart therefrom without a license (subject to the provisions of § 123.22) when these articles are on the person of an individual or in his baggage, and are intended exclusively for his personal use for sporting or scientific purposes or for personal protection. No more than three arms and no more than five hundred cartridges shall in any case be carried by an individual under the provisions of this section.

§ 123.53 *Ammunition for personal use of consignee.* Licenses will not be required for the exportation or importation of ammunition for rifles, carbines, revolvers, or pistols, provided the quantity does not exceed five hundred rounds in any shipment and the ammunition is for the personal use of the consignee and not for resale (subject to the provisions of § 123.22). A license is required however, for the exportation of such ammunition to Bahrein, Kuwait, Qatar, the Trucial States, and Muscat-and-Oman.

§ 123.54 *Arms for the individual use of members of the Armed Forces.* (a) Collectors of customs are authorized to permit members of the United States Armed Forces or United States civilian personnel employed by those Forces, presenting written authorization from their commanding officers to ship or bring into the United States without license, war trophies and souvenirs consisting of rifles, carbines, revolvers, pistols, and ammunition therefor.

(b) Collectors of customs are authorized to permit rifles, carbines, revolvers, pistols, and parts of such weapons to leave the United States without a license, provided they are consigned to servicemen's clubs overseas or to individual members of the Armed Forces of the United States, are accompanied by a written authorization from the commanding officer, and the parcel is plainly marked as to content.

(c) Collectors of customs are authorized to permit parts, components, and accessories of rifles, carbines, pistols, and revolvers to enter or leave the United States without a license when the shipment does not exceed $25.00 in value, is consigned to individual members of the Armed Forces of the United States, is for the consignee's own use and not for resale, and the parcel is plainly marked as to content.

EXEMPTIONS FOR AIRCRAFT SHIPMENTS

§ 123.61 *United States scheduled transports.* Customs officers are authorized to permit civil aircraft operated by commercial airlines and used on regular schedules between the United States and foreign countries under certificates of public convenience and necessity to depart from and enter into the United States without a license.

§ 123.62. *Aircraft of foreign registry entering the United States.* (a) Collectors of customs are authorized to permit aircraft of foreign registry to enter and depart from the United States without requiring the presentation of an individual license, provided it is established to their satisfaction that the country of ultimate destination is the same as the country of origin, that the airplane will not be sold or disposed of in the United States, and that it will not remain in the United States longer than six months.

(b) This section does not apply to aircraft returning to the United States for major overhaul or the installation of major components and re-export. The provisions of § 123.71 (b) are applicable to such aircraft.

§ 123.63 *Return of small United States civil aircraft for repair and reconditioning.* Collectors of customs are authorized to permit the importation without a license of personal or executive type civil aircraft with a seating capacity of no more than five passengers, and components thereof, if they were previously exported under license from the United States. An export license will, however, be required if the equipment is subsequently to be reexported.

§ 123.64 *United States aircraft on temporary sojourn abroad.* (a) Collectors of customs may permit the departure from the United States without a license of aircraft, except military aircraft, such as fighters and bombers, which are flown or shipped from the United States for a temporary sojourn abroad of not to exceed six months' duration, provided the collector of customs is satisfied that the conditions set forth in paragraph (b) of this section have been met.

(b) Owners or operators of aircraft departing from the United States for temporary sojourn abroad under the provisions of paragraph (a) of this section shall certify by written declaration submitted in duplicate in a form acceptable to the collectors of customs that (1) the aircraft will not be disposed of; (2) the aircraft will be returned to the United States within six months; (3) it will be operated only by a U. S. licensed pilot, except on demonstration flights; and (4) it will remain under U. S. registry while abroad. The provisions of § 126.2 of this chapter shall apply to such a written declaration.

(c) When a written declaration setting forth an intention to comply with the above provisions is accepted by a customs officer at the port of departure, he shall endorse it, return it to the owner or operator prior to the departure of the aircraft, and retain a copy for his records. Upon the return of the aircraft to the United States, the endorsed copy of the declaration must be surrendered to the collector of customs at the port of entry. If the port of entry is not the same as that from which the aircraft departed, the customs officer at the port of entry shall forward the surrendered copy of the declaration to the customs authorities at the port from which the aircraft originally departed, noting thereon the date of entry.

(d) Collectors of customs may permit an aircraft to make a series of flights to and from the United States under a temporary sojourn authorization not to exceed six months, provided a written declaration in duplicate is submitted to and endorsed by a customs officer certifying that the conditions set forth in paragraph (b) of this section will be observed. The provisions of § 126.2 of this chapter shall also apply to such a written declaration. A copy of the declaration shall be retained by the customs officer endorsing the original. In the case of an aircraft making a series of flights over a six months' period, the endorsed declaration shall be carried on the aircraft as evidence of the fact that the required permission has been granted. At the end of the six month period, the declaration shall be surrendered to the customs office which granted the permission.

(e) If, at the end of the six-month period, a temporary sojourn permit remains outstanding, the collector of customs at the port of exit should submit the matter to the Customs Agency Service for investigation.

(f) The collector of customs at the port of departure is authorized in appropriate instances, to grant one six-month extension in temporary sojourn cases. Requests for extensions beyond a year should be referred to the Department of State for comment.

MISCELLANEOUS EXEMPTIONS

§ 123.71 *Articles returned to the United States for repair or overhaul and re-export.* (a) Collectors of customs are authorized on presentation of satisfactory evidence to permit the entry into the United States without an import license of arms, ammunition, and implements of war which have been legally exported from the United States and which are being returned to the United States for repair and re-export to the country of origin (subject to the provisions of § 123.22. An individual export license, however, is required before such articles may be re-exported; for civil aircraft, see paragraph (b) of this section.

(b) The re-export of civil aircraft returned for repair is subject to the requirement of an export license only when it has undergone a major overhaul or when major components were installed therein during its stay in the United States. Major components of aircraft are defined in § 121.6 of this chapter.

§ 123.72 *Certain helium gas exports.* Collectors of customs are autnorized to permit the export without a license of miniature cylinders containing helium gas in fractional cubic foot quantities mixed with other gases, provided:

(a) The gas is destined for medical use;

(b) The shipment to any consignee does not exceed ten cubic feet of "contained helium", as defined in § 121.7 of this chapter;

(c) The ultimate destination is not a country named in § 123.22; and

(d) The company has arranged to furnish the Department of State with periodic reports of such shipments.

MISCELLANEOUS PROVISIONS

§ 123.81 *Articles manufactured with Government-owned equipment.* It is the responsibility of the exporter of United States Munitions List articles to obtain the advance approval of the appropriate defense agency for the exportation of articles manufactured with equipment owned by the United States Government. If the exporter has failed to obtain such approval prior to the submission of an application for license to export, he must indicate this fact on his application for license to export.

§ 123.82 *National Firearms Act; Federal Firearms Act; Federal Explosives Act.* (a) The provisions of this subchapter shall be considered as binding in addition to and not in lieu of those established under the provisions of the National Firearms Act, approved by the President June 26, 1934, as amended, now known as ch. 53, Internal Revenue Code of 1954 (26 U. S. C. 5801–5862); under the provisions of the Federal Firearms Act, approved by the President June 30, 1958 (52 Stat. 1250; 15 U. S. C. sections 901–909), as amended March 10, 1947 (61 Stat. 11), August 6, 1939 (53 Stat. 1222), and February 7, 1950 (64 Stat. 3); and under the provisions of the Federal Explosives Act, approved by the President

October 6, 1917 (40 Stat. 385; 50 U. S. C. ch. 8), as amended December 26, 1941 (55 Stat. 863; 50 U. S. C. ch. 8).

(b) The National Firearms Act imposes certain taxes upon manufacturers, importers, and dealers in certain firearms; taxes upon the making of certain firearms, and taxes on transfers of certain firearms. The term "firearm", as used in this act, includes "a shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, and includes a muffler or silencer for any firearms whether or not such firearm is included within the foregoing definition, but does not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller and if its barrel is sixteen inches or more in length."

(c) The Federal Firearms Act applies to manufacturers and dealers who are engaged in interstate or foreign commerce in firearms and ammunition. The term "firearm", as used in this Act, means "any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon"; and the term "ammunition" includes "all pistol or revolver ammunition. It shall not include shotgun shells, metallic ammunition suitable for use only in rifles, or any .22 caliber rim fire ammunition."

(d) The Federal Explosives Act is applicable to the manufacture, distribution, storage, use, and possession of explosives in time of war. The term "explosives", as used in this Act, means "gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion."

(e) Rules and regulations for the enforcement of the National Firearms Act and Federal Firearms Act are prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Rules and regulations for the enforcement of the Federal Explosives Act are prescribed by the Director of the Bureau of Mines, Department of the Interior.

PART 124—LICENSING AGREEMENTS, TRANSMISSION OF INFORMATION

Section 124.3 (b) is amended as follows:

(b) Licensing agreements will be written in such a way that (1) the licensor may not include as a cost factor to the licensee a charge for technical data furnished or developed at the expense of the United States Government, (2) the licensee may not include as a cost factor in the sale of articles produced under the agreement a charge for technical data furnished or developed at the expense of the United States Government, and (3) new designs, processes or manufacturing techniques derived from such data will be made available on an unrestricted basis to the United States Government at reasonable cost by the licensee.

(Sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR, 1954 Supp.)

PART 127—FOREIGN MILITARY AIRCARFT FLIGHTS

Sections 127.1 through 127.3 are deleted and replaced by the following sections:

§ 127.1 *Foreign military flight clearances.* Foreign governments desiring to overfly or land on United States territory are required to obtain written authorization to do so in advance from the Department of State. Such a request normally is made by the appropriate foreign government embassy in Washington in the form of a diplomatic note. The request should reach the Department no later than 72 hours before the overflight is to take place.

§ 127.2 *Use of military installations.* Requests by foreign governments for authorization to land their military aircraft at United States military installations should have the approval of the defense agency owning or leasing the military installations in addition to the required authorization of the Secretary of State for overflight of United States territory (See § 127.1). Requests for authorization to visit a military installation should be made to the defense agency concerned as far in advance as possible and no later than 72 hours before the arrival date. It should contain information outlined in § 127.3.

§ 127.3 *Required Information.* In regard to the information required in connection with §§ 127.1 and 127.2, foreign governments requesting permission for military aircraft to overfly and land should support the request with the following information:

(a) The purpose of the flight;

(b) The type and identity of the aircraft;

(c) Names of crew;

(d) Names and nationality of passengers;

(e) Dates of arrival and departure at each point;

(f) Special services and facilities desired.

(Sec. 414, 68 Stat. 848; 22 U. S. C. 1934; Sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR, 1954 Supp.)

PART 128—ADMINISTRATIVE PROCEDURES

Section 128.1 is amended as follows:

§ 128.1 *Administrative Procedures Act.* (a) The functions conferred by section 414 of the Mutual Security Act of 1954 are excluded from the operation of the Administrative Procedures Act (60 Stat. 237), as contemplated by sections 1003 and 1004 thereof.

(b) The functions conferred by section 6A of the Air Commerce Act of 1926 as amended are excluded from the operations of the Administrative Procedures Act as contemplated by sections 1003 and 1004 thereof.

(Sec. 414, 68 Stat. 848; 22 U. S. C. 1934, sec. 103, E. O. 10575, 19 F. R. 7251, 3 CFR, 1954 Supp.)

Dated: December 24, 1957.

For the Secretary of State.

RODERIC L. O'CONNOR,
Administrator,
Bureau of Security
and Consular Affairs.

[F. R. Doc. 57-10826; Filed, Dec. 30, 1957; 8:48 a. m.]

TITLE 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

SUBPART—REGULATIONS FOR THE 1958 AND SUCCEEDING CROP YEARS

COUNTIES DESIGNATED FOR CORN CROP INSURANCE

Correction

In Federal Register Document 57-9832, published on page 9515 of the issue for November 28, 1957, the county "Sauk" should be added in alphabetical position under "Wisconsin".

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Reg. 812]

PART 812—SUGAR REQUIREMENTS AND QUOTAS: HAWAII AND PUERTO RICO

CALENDAR YEAR 1958

By virtue of the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended) and the Administrative Procedure Act (60 Stat. 237, 5 U. S. C. 1001), these regulations are hereby made, prescribed, and published to be in force and effect for the calendar year 1958 or until amended or superseded by regulations hereafter made during the calendar year 1958.

Basis and purpose. The determinations and the sugar quotas set forth below have been made and established pursuant to section 203 of the Sugar Act of 1948, as amended (hereinafter called the "act"). The act provides for the Secretary of Agriculture to make such determinations and establish such quotas for the calendar year 1958 during December 1957. The determinations of the sugar requirements have been based insofar as required by section 201 of the act, on official statistics of the Department of Agriculture and statistics pub-

lished by other agencies of the Federal Government. The purpose of such determinations is to provide the amounts of sugar needed to meet the requirements of consumers in the Territory of Hawaii and in Puerto Rico for the calendar year 1958. The determinations provide the basis for the establishment of sugar quotas for such year for local consumption therein pursuant to section 203 of the act.

Prior to the issuance of these regulations, notice was given (22 F. R. 8540) that the Secretary of Agriculture was preparing, among other things, to determine the requirements and quotas for the calendar year 1958 for local consumption in Hawaii and Puerto Rico and that any interested person might present any data, views or arguments with respect thereto in writing not later than November 29, 1957. Due consideration has been given to the data, views and arguments submitted, in accordance with the Administrative Procedure Act.

Since the act provides that the Secretary of Agriculture determine sugar requirements and establish quotas for local consumption in Hawaii and in Puerto Rico during December 1957 to be applicable for the calendar year 1958, it is impracticable and not in the public interest to comply with the 30-day effective date requirements of the Administrative Procedure Act. Accordingly, these regulations shall be effective January 1, 1958.

§ 812.20 *Sugar requirements, Hawaii and Puerto Rico, 1958.* It is hereby determined, pursuant to section 203 of the act, that the amount of sugar needed to meet the requirements of consumers in the Territory of Hawaii for the calendar year 1958 is 45,000 short tons, of sugar, raw value, and that the amount of sugar needed to meet the requirements of consumers in Puerto Rico for the calendar year 1958 is 110,000 short tons, raw value.

§ 812.21 *Local consumption quotas.* There are hereby established, pursuant to section 203 of the act, for local consumption in the Territory of Hawaii and in Puerto Rico, for the calendar year 1958 the following quotas:

Area:	*Quotas in terms of short tons, raw value*
Hawaii	45,000
Puerto Rico	110,000

§ 812.22 *Restrictions on marketing.* For the calendar year 1958 all persons are hereby forbidden, pursuant to section 209 of the act, from marketing in the Territory of Hawaii or in Puerto Rico, for consumption therein, any sugar or liquid sugar after the quota for the area for the calendar year 1958 has been filled.

Statement of bases and considerations. Pursuant to section 203 of the act, the provisions of section 201 of the act deemed applicable to the determination of the amounts of sugar needed to meet the requirements of consumers in Hawaii and in Puerto Rico relate to (1) the quantities of sugar distributed for local consumption in Hawaii and in Puerto Rico during the twelve-month period ended October 31, 1957; (2) deficiencies or surpluses in inventories of sugar, and (3) changes in consumption because of changes in population and demand conditions.

The quantities of sugar distributed for consumption in Hawaii and Puerto Rico, including that which was lost in refining after charge to the local quotas, during such twelve-month period were approximately 38,000 short tons of sugar, raw value, and 109,000 short tons of sugar, raw value, respectively.

No official estimate of population for either of these areas for 1957 or 1958 is available. Previous trends indicate a small annual increase in population may be expected.

In Hawaii sugar distribution for local consumption during the twelve-month period ended October 31, 1957, was approximately 38,000 tons, about 3,500 tons less than during the calendar year 1956. With distribution during 1957 expected to be substantially less than in 1956 but quota charges substantially greater in 1957 than in 1956, the amount of sugar available in 1958, without charge to the 1958 quota, will be substantially greater than a year earlier. In view of this greater carryover of sugar into 1958 and the fact that distribution for local consumption has not been in excess of 43,186 tons in any of the past ten years, it appears that a quota of 45,000 short tons, raw value, will provide an adequate supply of sugar for local consumption in Hawaii for 1958.

In Puerto Rico sugar distribution for local consumption plus the quantity of sugar charged to the local quota but lost in refining sugar locally, amounted to 105,487 short tons, raw value, in 1956 and for 1957 will likely exceed that quantity since local distribution during the first ten months was about 4,000 tons greater in 1957 than during the comparable period of 1956. If distribution for the last two months of 1957 parallels that for November and December of 1956, the amount of sugar available for distribution in early 1958, without charge to the 1958 quota, will exceed by about 3,000 tons the amount of sugar, previously charged to a quota, available a year earlier. Although there has been an increase in distribution in 1957, with the larger prospective supply of refined sugar stocks available for early 1958, it appears that a quota of 110,000 short tons, raw value, will provide an adequate supply of sugar for local consumption in Puerto Rico for 1958.

In accordance with the above, the quotas for local consumption in Hawaii and Puerto Rico for 1958 have been established at 45,000 and 110,000 short tons, raw value, respectively.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies secs. 201, 203, 209, 210; 61 Stat. 923, as amended, 925, 928; 7 U. S. C. 1111, 1113, 1119, 1120)

Done at Washington, D. C., this 26th day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10857; Filed, Dec. 30, 1957; 8:52 a. m.]

[Sugar Reg. 814.25]

PART 814—ALLOTMENT OF SUGAR QUOTAS

MAINLAND CANE SUGAR AREA, 1958

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act"), for the purpose of establishing allotments of the 1958 sugar quota for the Mainland Cane Sugar Area for the period January 1, 1958, to the date allotments of such quota are prescribed for the full calendar year 1958.

Omission of recommended decision and effective date. The record of the hearing regarding the subject of this order shows that approximately 360,000 tons of 1957-crop sugar will remain to be marketed after January 1, 1958. This quantity of sugar, along with production of sugar from 1958-crop sugarcane, will result in a supply of sugar available for marketing in 1958 sufficiently in excess of the 1958 quota that may be expected for the area that disorderly marketing may occur and some interested persons may be prevented from having equitable opportunities to market sugar (R. 7). The inventories of sugar on January 1, 1958, together with production in early 1958, may make it possible for some allottees to market shortly after January 1, 1958, a quantity of sugar larger than the allotments established by this order. It, therefore, is necessary that such allotments, to be effective, be in effect on January 1, 1958. In view thereof and since this proceeding was instituted for the purpose of issuing allotments to prevent disorderly marketing of sugar and to afford all interested persons an equitable opportunity to market, it is hereby found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237), is impracticable and contrary to the public interest and, consequently, this order shall be effective on January 1, 1958.

Preliminary statement. Section 205 (a) of the act requires the Secretary to allot a quota whenever he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar or liquid sugar, or (4) to afford all interested persons equitable opportunities to market sugar within the quota for the area. Section 205 (a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

Pursuant to the applicable rules of practice and procedure (7 CFR 801.1 et seq.) a preliminary finding was made that allotment of the quota is necessary, and a notice was published on October 23, 1957 (22 F. R. 8313), of a public hearing to be held at Washington, D. C., in Room 2W, Administration Building of the Department of Agriculture on November 4, 1957,

at 9:30 a. m., e. s. t., for the purpose of receiving evidence to enable the Secretary, (1) to affirm, modify or revoke the preliminary finding of necessity for allotment, and (2) to establish fair, efficient and equitable allotments of a portion of the 1958 quota for the Mainland Cane Sugar Area for the period January 1, 1958, to the date the Secretary prescribes allotments of such quota for the calendar year 1958.

The hearing was held at the place and time specified in the notice.

Basis for findings and conclusions. Section 205 (a) of the act reads in pertinent part as follows:

> * * * Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person and the ability of such person to market or import that portion of such quota or proration thereof allotted to him * * *

The necessity for allotment of the 1958 sugar quota for the Mainland Cane Sugar Area is indicated by the extent to which the quantity of sugar in prospect for marketing in 1958 exceeds the quota that may be established and that in the absence of allotments disorderly marketing would result, and some interested persons would be prevented from having equitable opportunities to market sugar (R. 7).

Testimony indicates that it is desirable to defer allotment proceedings with respect to the allotment of the full quota for 1958 until most allottees have completed processing of 1957-crop sugarcane, but allotments of a portion of the quota should be in effect beginning January 1, 1958, because inventories of sugar on January 1, 1958, together with production of sugar in early 1958 may make it possible for some allottees to market shortly after January 1, 1958, a quantity of sugar larger than eventually may be allotted to them (R. 7, 8).

To meet this situation the Government witness proposed that allotment of 450,000 short tons, raw value, of the 1958 sugar quota for the Mainland Cane Sugar Area be established to be effective for the period January 1, 1958, to the date allotments of the entire quota for the calendar year are established, by allotting 450,000 short tons, raw value, to the respective allottees on the basis that each allottee's allotment be the same proportion of 450,000 short tons, raw value, as his allotment was of the total 1957 allotments established in Sugar Regulation 814.24, Amendment 2, (22 F. R. 4641) effective July 2, 1957 (R. 8, 9; Ex. 4).

Consideration is given to the three factors cited in the act in the same manner as was given in allotting the full quota for 1957, and such basis for allotment of a portion of the 1958 quota to be in effect for the early part of the year cannot be substantially improved (R. 10, 12).

In accordance with the hearing record (R. 13) it has been found that Erath Sugar Company, Ltd., is successor to the Vermilion Sugar Company.

The hearing record contains proposals to include in the order to become effective January 1, 1958, paragraphs essentially the same as paragraphs (b), (c) and (d) of Sugar Regulation 814.24, which established initial allotments for 1957 (R. 3, 14; Ex. 7).

No testimony, proposals or arguments contrary to that outlined above appear in the hearing record.

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that:

(1) For the calendar year 1958 Mainland Cane Sugar processors will have available for marketing from 1957-crop sugarcane about 360,000 short tons, raw value, of sugar. This quantity of sugar, together with production of sugar from 1958-crop sugarcane, will result in a supply of sugar available for marketing in 1958 sufficiently in excess of the anticipated 1958 quota for the Mainland Cane Sugar Area to cause disorderly marketing and prevent some interested persons from having equitable opportunities to market sugar.

(2) The allotment of the 1958 Mainland Cane Sugar Area quota is necessary to prevent disorderly marketing and to afford all interested persons equitable opportunities to market sugar processed from sugarcane produced in the area.

(3) It is desirable to defer the allotment of the entire 1958 calendar year sugar quota for the Mainland Cane Sugar Area until processings from 1957-crop sugarcane can be known or closely estimated for all allottees, but it is necessary to make allotments of a portion of the 1958 quota effective January 1, 1958 to prevent some allottees from marketing a quantity of sugar larger than eventually may be allotted to them when the entire 1958 quota is allotted.

(4) The findings in (3), above, require that, effective for the period January 1, 1958, until the date allotments of the entire 1958 calendar year Mainland Cane Sugar Area quota are prescribed 450,000 short tons, raw value, of the 1958 quota shall be allotted and that allotments of such quantity be established by allotting to each allottee the same proportion of 450,000 short tons, raw value, as his allotment was of the total 1957 allotments established by Sugar Regulation 814.24, Amendment 2, effective July 2, 1957.

(5) Allotments of the 1958 sugar quota for the Mainland Cane Sugar Area established as found in (4), above, give consideration to the statutory factors "processings * * * from * * * proportionate shares," "past marketings" and "ability to market".

(6) The allotments of the 1957 quota referred to in (4), above, showing the allotment of 2,450 tons for Vermilion Sugar Co., Inc., combined with that of Erath Sugar Co., Ltd., pursuant to finding (7), are set forth in the following table:

	Allotments (short tons, raw value)
Albania Sugar Coop., Inc	6,698
Alma Plantation, Ltd	8,501
J. Aron & Co., Inc	13,767
Billeaud Sugar Factory	8,696
Breaux Bridge Sugar Coop	7,025
J. M. Burguieres Co., Ltd., The	7,986
Burton-Sutton Oil Co., Inc	7,973
Caire & Graugnard	3,475
Caldwell Sugar Coop., Inc	11,335
Catherine Sugar Co., Inc	8,508
Columbia Sugar Company	6,195
Cora-Texas Mfg. Co., Inc	2,890
Dugas & LeBlanc, Ltd	12,541
Duhe & Bourgeois Sugar Co., Inc	9,990
Erath Sugar Co., Ltd	7,527
Evan Hall Sugar Coop., Inc	22,287
Evangeline Pepper & Food Products, Inc	4,964
Fellsmere Sugar Producers Assoc	8,520
Frisco Cane Co., Inc	905
Glenwood Coop., Inc	15,595
Gulf States Land & Industries, Inc	21,413
Helvetia Sugar Coop., Inc	8,985
Iberia Sugar Coop., Inc	14,866
LaFourche Sugar Company	14,728
Harry L. Laws & Co., Inc	10,996
Levert-St. John, Inc	9,287
Loisel Sugar Co., Inc	5,667
Louisiana State Penitentiary	2,978
Lula Factory, Inc	11,492
Meeker Sugar Coop., Inc	4,756
Milliken & Farwell, Inc	13,094
National Sugar Refining Co	12,824
Okeelanta Sugar Refinery, Inc	17,832
M. A. Patout & Son, Ltd	9,840
Poplar Grove Pltg. & Ref. Co., Inc	7,345
St. James Sugar Coop., Inc	12,881
St. Mary Sugar Coop., Inc	12,215
South Coast Corp	43,643
Southdown Sugars, Inc	42,173
Sterling Sugars, Inc	20,515
J. Supple's Sons Pltg. Co., Inc	5,240
United States Sugar Corp	119,036
Valentine Sugars, Inc	10,418
Vida Sugars, Inc	4,568
A. Wilbert's Sons Lbr. & Sh. Co	9,695
Young's Industries, Inc	6,459
Louisiana State University	100
All other persons	00
Total	628,424

(7) Erath Sugar Company, Ltd., shall succeed to all interests of the Vermilion Sugar Company as an allottee of the 1958 sugar quota for the Mainland Cane Sugar Area.

(8) Provision shall be made in the order to restrict marketings of sugar to allotments established herein.

(9) To facilitate full and effective use of allotments, provision shall be made in the order for transfer of allotments under circumstances of a succession of interest, and under circumstances involving an allottee becoming unable to process sugarcane and such cane as he would normally process, if operating, is processed by other allottees.

(10) To aid in the efficient movement and storage of sugar, provision shall be made to enable a processor to market a quantity of sugar of his own production in excess of his allotment equivalent to the quantity of sugar which he holds in storage and which was acquired by him within the allotment of another allottee of the 1958 Mainland Cane Sugar Area quota.

(11) For the period January 1, 1958, until the date allotments of the entire 1958 calendar year sugar quota for the

Mainland Cane Sugar Area are prescribed, the allotments established in the foregoing manner and in the quantities set forth in the order provide a fair, efficient and equitable distribution of such quota and meet the requirements of section 205 (a) of the act.

Order. Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act; *It is hereby ordered:*

§ 814.25 *Allotment of the 1958 sugar quota for the Mainland Cane Sugar Area*—(a) *Allotments.* For the period January 1, 1958, until the date allotments of the entire 1958 calendar year sugar quota for the Mainland Cane Sugar Area are prescribed, the 1958 quota for the Mainland Cane Sugar Area is hereby allotted, to the extent shown in this section, to the following processors in the quantities which appear opposite their respective names:

Processors	Allotments (short tons, raw value)
Albania Sugar Coop., Inc	4,796
Alma Plantation, Ltd	6,088
J. Aron & Co., Inc	9,858
Billeaud Sugar Factory	6,227
Breaux Bridge Sugar Coop	5,030
J. M. Burguieres Co., Ltd., The	5,718
Burton-Sutton Oil Co., Inc	5,710
Caire & Graugnard	2,488
Caldwell Sugar Coop., Inc	8,117
Catherine Sugar Co., Inc	6,092
Columbia Sugar Company	4,436
Cora-Texas Mfg. Co., Inc	2,070
Dugas & LeBlanc, Ltd	8,980
Cuhe & Bourgeois Sugar Co., Inc	7,154
Erath Sugar Co., Ltd	5,390
Evan Hall Sugar Coop., Inc	15,959
Evangeline Pepper & Food Products, Inc	3,554
Fellsmere Sugar Producers Assoc	6,101
Frisco Cane Co., Inc	648
Glenwood Coop., Inc	11,167
Gulf States Land & Industries, Inc	15,334
Helvetia Sugar Coop., Inc	6,434
Iberia Sugar Coop., Inc	10,645
LaFourche Sugar Company	10,546
Harry L. Laws & Co., Inc	7,874
Levert-St. John, Inc	6,650
Loisel Sugar Co., Inc	4,058
Louisiana State Penitentiary	2,133
Lula Factory, Inc	8,229
Meeker Sugar Coop., Inc	3,406
Milliken & Farwell, Inc	9,376
National Sugar Refining Co	9,183
Okeelanta Sugar Refinery, Inc	12,769
M. A. Patout & Son, Ltd	7,046
Poplar Grove Pltg. & Ref. Co., Inc	5,259
St. James Sugar Coop., Inc	9,224
St. Mary Sugar Coop., Inc	8,747
South Coast Corp	31,252
Southdown Sugars, Inc	30,200
Sterling Sugars, Inc	14,690
J. Supple's Sons Pltg. Co., Inc	3,753
United States Sugar Corp	85,239
Valentine Sugars, Inc	7,460
Vida Sugars, Inc	3,271
A. Wilbert's Sons Lbr. & Sh. Co	6,943
Young's Industries, Inc	4,625
Louisiana State University	71
All other persons	00
Total	450,000

(b) *Restrictions on shipment and marketing.* For the period January 1, 1958, until the date an allotment order is issued allotting the entire 1958 calendar year sugar quota for the Mainland Cane Sugar Area, each person named in paragraph (a) of this section, and any other person, is hereby prohibited from marketing in interstate commerce or in competition with sugar or liquid sugar shipped, transported or marketed in interstate commerce or foreign commerce, any sugar or liquid sugar produced from sugarcane grown in the Mainland Cane Sugar Area in excess of his allotment established in paragraph (a) of this section.

(c) *Transfer of allotments.* The Director of the Sugar Division, Commodity Stabilization Service, of the Department, may, consistent with the provisions of the act: (1) Permit marketings to be made by one allottee, or other person, within the allotment or portion thereof established for another allottee upon receipt of evidence satisfactory to him of a merger, consolidation, transfer of sugar-processing facilities, or other action of similar effect upon the allottees or persons involved, and upon relinquishment by one of the allottees of all or a portion of its allotment, and (2) permit, when approved in writing by him, the transfer of allotments made in paragraph (a) of this section, in whole or in part, to another allottee thereunder upon a showing that the transferee has processed or will process 1957-crop sugarcane because of inability of the transferor, arising subsequent to the processing of the 1956-crop, to process the tonnage of sugarcane which otherwise would be processed by him.

(d) *Exchanges of sugar between allottees.* When approved in writing by the Director of the Sugar Division, or the Chief of the Quota and Allotment Branch thereof, Commodity Stabilization Service of the Department, any allottee holding sugar or liquid sugar acquired by him within the allotment of another person established in paragraph (a) of this section, may ship, transport or market up to an equivalent quantity of sugar processed by him in excess of his allotment established in paragraph (a) of this section. The sugar or liquid sugar held under this paragraph shall be subject to all other provisions of this section as if it had been processed by the allottee who acquired it for the purpose authorized by this paragraph.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies secs. 205, 209; 61 Stat. 926, 928; 7 U. S. C. 1115, 1119)

Done at Washington, D. C., this 26th day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10855; Filed, Dec. 30, 1957; 8:52 a. m.]

[Sugar Reg. 814.34]

PART 814—ALLOTMENT OF SUGAR QUOTAS

DOMESTIC BEET SUGAR AREA, 1958

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act"), for the purpose of establishing allotments of the 1958 sugar quota for the Domestic Beet Sugar Area for the period January 1, 1958, to the date allotments of such quota are prescribed for the full calendar year 1958.

Omission of recommended decision and effective date. The record of the hearing regarding the subject of this order shows that approximately 1,660,000 short tons, raw value, of sugar will be held in inventory by the allottees on January 1, 1958, or will be produced by them from the remainder of the 1957-crop sugar beets during 1958. This quantity of sugar, along with production of sugar from the 1958-crop beets will result in a supply of sugar available for marketing in 1958 in excess of the 1958 quota that may be expected for the area. Thus, lack of continuity in allotment of the quota might lead to disorderly marketing and some interested persons may be prevented from having equitable opportunities to market sugar and the interests of growers of sugar beets might be adversely affected (R. 8, 9). Inventories of sugar on January 1, 1958, together with production in early 1958, may make it possible for some allottees to market a quantity of sugar larger than the allotments established by this order. It, therefore, is necessary that such allotments, to be effective, be in effect on January 1, 1958. In view thereof, and since this proceeding was instituted for the purpose of issuing allotments to prevent disorderly marketing of sugar and to afford all interested persons an equitable opportunity to market, it is hereby found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237), is impracticable and contrary to the public interest and, consequently, this order shall be effective on January 1, 1958.

Preliminary statement. Section 205 (a) of the act requires the Secretary to allot a quota whenever he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar, or (4) to afford all interested persons equitable opportunities to market sugar within the quota for the area. Section 205 (a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

Pursuant to the applicable rules of practice and procedure (7 CFR 801.1 et seq.) a preliminary finding was made that allotment of the quota is necessary, and a notice was published on October 23, 1957 (22 F. R. 8313), of a public hearing to be held at Washington, D. C., in Room 2W, Administration Building of the Department of Agriculture on November 4, 1957, at 9:30 a. m., e. s. t., for the purpose of receiving evidence to

enable the Secretary (1) to affirm, modify or revoke the preliminary finding of necessity for allotments, and (2) to establish fair, efficient and equitable allotments of a portion of the 1958 quota for the Domestic Beet Sugar Area for the period January 1, 1958, to the date the Secretary prescribes allotments of such quota for the calendar year 1958.

The hearing was held at the place and time specified in the notice.

Basis for findings and conclusions. Section 205 (a) of the act reads in pertinent part as follows:

> * * * Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person and the ability of such person to market or import that portion of such quota or proration thereof allotted to him * * *

The necessity for allotment of the 1958 sugar quota for the Domestic Beet Sugar Area is indicated by the fact that the quantity of sugar in prospect for marketing in 1958 exceeds the quota that may be established and that in the absence of allotments disorderly marketing might occur and some interested persons may be prevented from having equitable opportunities to market sugar (R. 8, 9).

Testimony indicates that it is desirable to defer allotment proceedings with respect to the allotment of the full quota for 1958 until the level of processings from the 1957 beet crop will be known or can be closely approximated, but that allotments of a portion of the quota should be in effect January 1, 1958, because inventories of sugar on January 1, 1958, together with production of sugar in early 1958 may make it possible for some allottees to market shortly after January 1, 1958, a quantity of sugar larger than eventually may be allotted to them (R. 9).

To meet this situation it was proposed that allotment of 1,600,000 short tons, raw value, of the 1958 sugar quota for the Domestic Beet Sugar Area be established to be effective for the period January 1, 1958, to the date allotments of the entire quota for the calendar year are established, by allotting 1,600,000 short tons, raw value, to the respective allottees on the basis that each allottee's allotment be the same proportion of 1,600,000 short tons, raw value, as his allotment was of the total 1957 allotments established in Sugar Regulation 814.33, Amendment 2, effective October 17, 1957 (22 F. R. 8216; R. 10; Ex. 4).

Allotments established on this basis give effect to the three factors cited in section 205 (a) of the act for consideration in allotting a quota in the same manner that these factors were treated in allotting the quota for 1957 and constitute a fair, efficient and equitable allotment of a portion of the 1958 quota to be in effect for the early part of the year (R. 11, 12).

The hearing record contains proposals (R. 13) to include in the order to become effective January 1, 1958, provisions similar to paragraph (b) "Marketing of sugar beets and molasses" and paragraph (c) "Transfer of allotment" and paragraph (d) "Restrictions on shipment and marketing" in S. R. 814.33, effective January 1, 1957 (22 F. R. 24). No testimony, proposals or arguments contrary to that outlined above appear in the hearing record.

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that:

(1) For the calendar year 1958 Domestic Beet Sugar processors will have available for marketing from 1957-crop sugar beets about 1,660,000 short tons, raw value, of sugar. This quantity of sugar, together with production of sugar from 1958-crop beets, will result in a supply of sugar available for marketing in 1958 sufficiently in excess of the anticipated 1958 quota for the Domestic Beet Sugar Area to cause disorderly marketing and prevent some interested persons from having equitable opportunities to market sugar.

(2) The allotment of the 1958 Domestic Beet Sugar Area quota is necessary to prevent disorderly marketings and to afford all interested persons equitable opportunities to market sugar processed from sugar beets produced in the area.

(3) Allotment of the entire 1958 calendar year sugar quota for the Domestic Beet Sugar Area should be deferred until processings of the 1957-crop sugar beets can be known or closely estimated for all allottees. However, it is necessary that an allotment of such quota be in effect on January 1, 1958, in order to avoid disorderly marketing out of sugar on hand on that date or to be produced shortly thereafter, and to afford all interested persons equitable opportunities to market sugar.

(4) The findings in (3), above, require that, effective for the period January 1, 1958, until the date allotments of the entire 1958 Domestic Beet Sugar Area quota for the full calendar year are prescribed, 1,600,000 short tons, raw value, of the 1958 quota shall be allotted. Allotments of such quantity shall be established by allotting to each allottee the same proportion of 1,600,000 short tons, raw value, as his allotment was of the total 1957 allotments established by Sugar Regulation 814.33, Amendment 2, effective October 17, 1957.

(5) In establishing allotment of the 1958 sugar quota for the Domestic Beet Sugar Area as found in (4), above, the statutory factors, "processings * * * from * * * proportionate shares," "past marketings" and "ability to market" have been taken into consideration.

(6) The allotments of the 1957 quota referred to in (4), above, are as set forth in the following table:

Processor	Allotments	
	Short tons, raw value	Equivalent in hundredweight refined beet sugar
Amalgamated Sugar Co., The	280,820	5,248,972
American Crystal Sugar Co	299,761	5,603,009
Buckeye Sugars, Inc	10,182	190,318
Franklin County Sugar Co	11,027	206,112
Great Western Sugar Co., The	494,879	9,250,075
Holly Sugar Corp	334,024	6,243,439
Layton Sugar Co	11,456	214,131
Menominee Sugar Co	13,600	254,206
Michigan Sugar Co	71,379	1,334,187
Monitor Sugar Division of Robert Gage Coal Co	31,899	596,243
National Sugar Manufacturing Co., The	4,559	85,215
Northern Ohio Sugar Co	21,734	406,243
Spreckels Sugar Co	208,115	3,890,000
Union Sugar Division, Consolidated Foods Corp	76,151	1,423,383
Utah-Idaho Sugar Co	201,661	3,769,364
Any other person	000	000
Total	2,071,247	38,714,897

(7) To assure that the marketing of sugar or liquid sugar is charged against the proper allotment, it is necessary that the order provide for charges to allotments of processors who sell sugar beets, or molasses derived from sugar beets, but retain and process such sugar beets or molasses into sugar or liquid sugar for delivery to or for the account of the buyer.

(8) To facilitate full and effective use of allotments, provisions shall be made in the order for transfer of allotments under circumstances of a succession of interest.

(9) Provision shall be made in the order to restrict marketings of sugar to allotments established herein.

(10) For the period January 1, 1958, until the date allotments of the entire 1958 calendar year sugar quota for the Domestic Beet Sugar Area are prescribed, the allotments established in the foregoing manner and in the quantities set forth in the order provide a fair, efficient and equitable distribution of such quota and meet the requirements of section 205 (a) of the act.

Order. Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act: *It is hereby ordered:*

§ 814.34 *Allotment of the 1958 sugar quota for the Domestic Beet Sugar Area*—(a) *Allotments.* For the period January 1, 1958, until the date allotments of the entire 1958 calendar year sugar quota for the Domestic Beet Sugar Area are prescribed, 1,600,000 short tons, raw value, of the 1958 quota for the Domestic Beet Sugar Area is hereby allotted to the following processors in the quantities which appear opposite their respective names:

Processor	Allotments	
	Short tons, raw value	Equivalent in hundredweight refined beet sugar
Amalgamated Sugar Co., The	216, 928	4, 054, 729
American Crystal Sugar Co	231, 560	4, 328, 224
Buckeye Sugars, Inc	7, 866	147, 028
Franklin County Sugar Co	8, 518	159, 215
Great Western Sugar Co., The	382, 285	7, 145, 514
Holly Sugar Corp	258, 027	4, 822, 935
Layton Sugar Co	8, 850	165, 421
Menominee Sugar Co	10, 505	196, 355
Michigan Sugar Co	55, 139	1, 030, 635
Monitor Sugar Division of Robert Gage Coal Co	24, 642	460, 598
National Sugar Manufacturing Co., The	3, 522	65, 832
Northern Ohio Sugar Co	16, 789	313, 813
Spreckels Sugar Co	160, 765	3, 004, 953
Union Sugar Division, Consolidated Foods Corp	58, 825	1, 099, 533
Utah-Idaho Sugar Co	155, 779	2, 911, 757
Any other person	000	000
Total	1, 600, 000	29, 906, 542

(b) *Marketing of sugar beets and molasses.* If sugar beets or molasses derived from sugar beets are sold by a processor but retained and processed by such processor and the sugar or liquid sugar processed therefrom is delivered to or for the account of the buyer of the sugar beets or molasses, the marketing of such sugar or liquid sugar shall, at the time such sugar or liquid sugar is so delivered, be charged to the allotment of the processor who sold and processed such sugar beets or molasses.

(c) *Transfer of allotment.* The Director of the Sugar Division, Commodity Stabilization Service, of the Department, may, consistent with the provisions and objectives of the Sugar Act, permit marketings to be made by one allottee, or other person, within the allotment or portion thereof established for another allottee upon receipt of evidence satisfactory to him of a merger, consolidation, transfer of sugar-processing facilities, or other action of similar effect upon the allottees or persons involved, and upon relinquishment by one of the allottees of all or a portion of its allotment.

(d) *Restrictions on shipment and marketing.* For the period January 1, 1958, until the date an allotment order is issued allotting the entire 1958 calendar year sugar quota for the Domestic Beet Sugar Area, each person named in paragraph (a) of this section, and any other person is hereby prohibited from marketing in interstate commerce or in competition with sugar or liquid sugar shipped, transported or marketed in interstate commerce or foreign commerce, any sugar or liquid sugar produced from sugar beets grown in the Domestic Beet Sugar Area in excess of his allotment established in paragraph (a) of this section.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies sec. 205, 209; 61 Stat. 926, 928; 7 U. S. C. 1115, 1119)

Done at Washington, D. C., this 26th day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10856; Filed, Dec. 30, 1957; 8:52 a. m.]

TITLE 48—TERRITORIES AND INSULAR POSSESSIONS

Chapter I—Office of Territories, Department of the Interior

PART 5—RAILROADS, TELEPHONE AND TELEGRAPH LINES IN ALASKA

PART 10—APPLICATION OF THE MARIHUANA TAX TO THE VIRGIN ISLANDS

EDITORIAL NOTE: The codification of Parts 5 and 10, comprising Title 48 of the Code of Federal Regulations, is hereby discontinued, and the title is vacated and reserved.

Executive Order 3861 of June 8, 1923, which was codified as Part 5, will be carried as a note to 43 CFR, Part 74; a cross reference to Executive Order 7715 of Sept. 26, 1937, 2 F. R. 2347, which was codified as Part 10, will be carried in 26 CFR (1939) Part 152.

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

[Docket 3666; Order 33]

PARTS 71–78—EXPLOSIVES AND OTHER DANGEROUS ARTICLES

MISCELLANEOUS AMENDMENTS

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 19th day of December 1957.

The matter of revision of certain regulations governing the transportation of explosives and other dangerous articles, formulated and published by the Commission, being under consideration, and

It appearing that Notice No. 33, dated October 4, 1957, setting forth certain proposed amendments to the said regulations, and the reasons therefor, and stating that consideration was to be given thereto, was published in the FEDERAL REGISTER on October 24, 1957 (22 F. R. 8388), pursuant to the provisions of section 4 of the Administrative Procedure Act; that pursuant to said notice interested parties were given an opportunity to be heard with respect to said proposed amendments; that written views or arguments were submitted to the Commission with respect to the proposed amendments;

And it further appearing that said views and arguments with respect to the proposed amendments are such as to warrant revision at this time of certain of the proposed amendments, and that in all other respects the proposed amendments set forth in the above referred-to Notice No. 33 are deemed justified and necessary:

It is ordered, That the aforesaid regulations governing the transportation of explosives and other dangerous articles be, and they are hereby, amended in the manner and to the extent set forth in said Notice No. 33, dated October 4, 1957, as revised by the specific deletions and modifications set forth as follows:

1. In § 71.8 amend paragraph (f) (1).

2. Revise the amendatory text to § 73.31 as shown below; delete the proposed addition of paragraph (g) (10) to § 73.31:

In § 73.31 amend paragraph (a) and table; add Note 12 to paragraph (a) table; amend paragraph (f); amend paragraph (h) (16 F. R. 9372, Sept. 15, 1951) (21 F. R. 4562, 4563, June 26, 1956) (22 F. R. 4789, July 9, 1957) to read as follows:

3. In § 73.135 amend paragraph (a) (9).

4. In § 78.325–9 paragraph (d) amend the second word in the first line to read, "or" instead of "for" so that the first four words preceding the colon read, "Baffles or shell stiffeners:"

5. In §78.326–7 paragraph (b) amend the last sentence to read, "The time of reckoning for such testing of such cargo tanks shall be from the time of the last test made in accordance with the requirements set forth under § 78.326–8; and if no such tests have ever been made, such tanks shall be tested within 6 months after March 19, 1958."

6. In § 78.330–8 amend paragraph (a).

7. In § 78.331–8 amend paragraph (a); in § 78.331–9 amend paragraph (a).

It is further ordered, That this order shall become effective March 19, 1958 and shall remain in effect until further order of the Commission;

It is further ordered, That compliance with the herein prescribed and amended regulations is hereby authorized on and after the date of service of this order;

And it is further ordered, That copies of this order be served upon all parties of record herein, and that notice shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D. C., and by filing a copy thereof with the Director, Division of Federal Register.

(Sec. 204, 49 Stat. 546, as amended, sec. 835, 62 Stat. 739; 49 U. S. C. 304, 18 U. S. C. 835)

By the Commission, Division 3.

[SEAL] HAROLD D. MCCOY,
Secretary.

PART 71—GENERAL INFORMATION AND REGULATIONS

In § 71.8 amend paragraph (f) (1) (15 F. R. 8263, Dec. 2, 1950) to read as follows:

§ 71.8 *Definitions.* * * *

(f) * * *

(1) Any tank designed to be permanently attached to any motor vehicle or any container not permanently attached to any motor vehicle which by reason of its size, construction, or attachment to any motor vehicle must be loaded and/or unloaded without being removed from the motor vehicle and which tank or container is to be used to transport any flammable liquid, corrosive liquid, or poisonous liquid, class B, is hereby designated "cargo tank".

PART 72—COMMODITY LIST OF EXPLOSIVES AND OTHER DANGEROUS ARTICLES CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 71–78 OF THIS CHAPTER

Amend § 72.5 *Commodity list* (15 F. R. 8263, 8264, 8265, 8266, 8268, 8269, 8270, 8271, 8273, Dec. 2, 1950) (21 F. R. 9355, Nov. 30, 1956) (19 F. R. 8524, Dec. 14, 1954) (21 F. R. 4431, June 23, 1956) (17 F. R. 4293, May 10, 1952) as follows:

§ 72.5 *List of explosives and other dangerous articles.* (a) * * *

Article	Classed as	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
(*Change*)				
Acids, liquid, n. o. s.	Cor. L.	73.244, 73.245	White	5 pints.
Alcohol, allyl	Pois. B	73.345, 73.346	Poison	55 gallons.
Alcohol, wood (methanol, methyl alcohol)	F. L.	73.118, 73.125	Red	10 gallons.
Allyl alcohol. *See* Alcohol, allyl.				
Ammonium bichromate (ammonium dichromate).	F. S.	73.153, 73.154, 73.235	Yellow	100 pounds.
Benzyl bromide (bromotoluene, alpha)	Cor. L.	No exemption, 73.281	White	5 pints.
Bromotoluene, alpha. *See* Benzyl bromide.				
Dicumyl peroxide, solid	Oxy. M.	73.153, 173.154	Yellow	25 pounds.
Dinitrochlorbenzol, solid (*dinitrochlorobenzene, chlorodinitrobenzol*).	Pois. B	73.364, 73.365	Poison	200 pounds.
Hydrofluoric and sulfuric acids, mixtures	Cor. L.	No exemption, 73.290	White	10 pints.
Igniters, jet thrust (*jato*), class B explosives	Expl. B	No exemption, 73.92	None	550 pounds.
Jet thrust unit (*jato*), class B explosives	Expl. B	No exemption, 73.92	None	550 pounds.
Mercuric sulfo cyanate, solid (mercuric thiocyanate).	Pois. B	73.364, 73.365	Poison	200 pounds.
Mercury bichloride, solid (mercuric chloride).	Pois. B	73.364, 73.372	Poison	200 pounds.
Methanol (methyl alcohol). *See* Alcohol, wood.				
Mixtures of hydrofluoric and sulfuric acids. *See* Hydrofluoric and sulfuric acids, mixtures.				
Propellant explosives, class A	Expl. A	No exemption, 73.64 (d).		See § 73.86.
Propellant explosives, class B	Expl. B	No exemption, 73.93	Red[8]	10 pounds.
(*Add*)				
Cigarette lighters charged with fuel	See § 73.21 (d).			
Chlorodinitrobenzol. *See* Dinitrochlorbenzol, solid.				
Dimethylhexane dihydroperoxide	Oxy. M.	No exemption, 73.157, 73.158.	Yellow	25 pounds.
Lighter fluid. *See* Cigar and cigarette lighter fluid.				
Mercaptan mixtures, aliphatic*	F. L.	No exemption, 73.141	Red	10 gallons.
Mercuric chloride. *See* Mercury bichloride, solid.				
Methyl alcohol (methanol). *See* Alcohol, wood.				
Nitric ether. *See* Ethyl nitrate.				
Oil of mirbane. *See* Nitrobenzol, liquid.				
Self-lighting cigarettes	See § 73.21 (d).			
*Weed killing compounds, liquid. *See* *Compounds, tree or weed killing, liquid.				
(*Cancel*)				
*Aliphatic mercaptan mixtures	F. L.	No exemption, 73.141	Red	10 gallons.
Mercuricyanamid solid	Pois. B	73.364, 73.365	Poison	200 pounds.

PART 73—SHIPPERS

SUBPART A—PREPARATION OF ARTICLES FOR TRANSPORTATION BY CARRIERS BY RAIL FREIGHT, RAIL EXPRESS, HIGHWAY, OR WATER

1. In § 73.21 add paragraph (d) (18 F. R. 802, Feb. 7, 1953) to read as follows:

§ 73.21 *Prohibited packing.* * * *

(d) The offering for transportation of any package containing a cigarette lighter charged with fuel and equipped with an ignition element, or any similar heating, lighting, or ignition device, or any self-lighting cigarette, is forbidden unless the design and method of packaging insofar as they affect safety in transportation have been approved by the Bureau of Explosives.

2. In § 73.31 amend paragraph (a) and Table; add Note 12 to paragraph (a) table; amend paragraph (f); amend paragraph (h) (16 F. R. 9372, Sept. 15, 1951) (21 F. R. 4562, 4563, June 26, 1956) (22 F. R. 4789, July 9, 1957) to read as follows:

§ 73.31 *Qualification, maintenance, and use of tank cars.* (a) Tanks mounted on or forming part of a car and built in compliance with the American Railway Association's specification for tank cars prior to July 1, 1927; or built in compliance with the Commission's specifications for tanks of tank cars in force prior to the effective date of Parts 71–78 of this chapter, including tanks already constructed or under construction on the effective date hereof in compliance with specifications for fusion-welded tanks of tank cars are authorized for service, until further order of the Commission, as follows:

Where these regulations call for specification Nos.—	These specification containers may also be used subject to the provisions of the following notes—
103 [4] [9] and 103-W [4] [9]	ARA-II,[1] [4] [5] III [4] [9] and IV.[6] [9]
103A [4] and 103A-W [4]	ARA-II [3] [4] and III.[3] [4]
103B [4] and 103B-W [4]	ARA-II [4] and III,[4] rubber lined.
103C-W [11]	103C.[5] [11]
103D-W, 103E-W, 103A-N-W.	(See Note 10.)
104 [4] [9] and 104-W [4] [9]	ARA-IV.[4] [9]
105A100 and 105A100-W.	104A [7] and 104A-W.
105A200-W	105A100-W.[12]
105A100AL-W	104A-AL-W.[7]
105A200AL-W	105A100AL-W.[12]
105A300-W	ARA-V,[3] ICC-105 [5] and 105A300.[3]
105A400-W	105A400.
105A500-W	105A500.
105A600-W	105A600.
106A500 and 106A500-X.	ICC-27 tanks mounted on a car and classified as multiunit tank prior to October 1, 1930.[6]
106A800 and 106A800X.	None.
106A800NCI	None.
107A****	None.

* * * * *

[No change in notes.]

[12] Tanks built as Spec. ICC-105A100-W or 105A100AL-W (§ 78.285 or § 78.294 of this chapter) may be altered and reclassified as Spec. 105A200-W or 105A200AL-W (§ 78.307 or § 78.308 of this chapter) respectively, by installing safety valves, retesting and stenciling in accordance with the applicable specification for the transportation of commodities authorized in Spec. ICC-105A200-W or 105A200AL-W (§ 78.307 or § 78.308 of this chapter) tanks.

* * * * *

(f) After alterations of tank cars or equipment therefor from original design, a certificate of compliance with the respective specification must be furnished to the car owner, to the Bureau of Explosives, and to the Secretary, Mechanical Division, Association of American Railroads.

(h) Tank cars and appurtenances may be used for the transportation of any commodity for which they are authorized. Tank cars proposed for a commodity service other than authorized, must be approved for such service by the Association of American Railroads, Committee on Tank Cars. Transfer of a tank car from one authorized service to another may be made only by the owner or owner's authorization. Class ICC–105A type tank cars may be used for any commodity for which they are approved by the Committee on Tank Cars when stenciled accordingly. When a tank car is stenciled to indicate that it is authorized for one commodity only, it must not be used for any other service.

[No change in Note 1.]

SUBPART B—EXPLOSIVES; DEFINITIONS AND PREPARATION

1. In § 73.92 cancel paragraph (d) (21 F. R. 3009, May 5, 1956) to read as follows:

§ 73.92 *Jet thrust units (jato), class B, igniters, jet thrust (jato), class B, or starter cartridges, jet engine, class B.* * * *

(d) [Canceled.]

2. In § 73.93 amend paragraph (f) (1) (20 F. R. 950, Feb. 15, 1955) to read as follows:

§ 73.93 *Propellant explosives for cannon, small-arms, rockets, guided missiles, or other devices.* * * *

(f) * * *

(1) In tightly closed metal cans or fiber containers, not exceeding 1 pound each, or in inside metal cans or fiber containers containing not more than one grain of propellant, not exceeding 5 pounds each, packed in outside wooden boxes, spec. 15A, 15B, or 15C (§ 78.168, § 78.169, or § 78.170 of this chapter), or outside fiberboard boxes, spec. 12B, 23F, or 23H (§ 78.205, § 78.214, or § 78.219 of this chapter). Not more than 10 pounds of propellant powder may be shipped in one outside container. Each outside container must be plainly marked "PROPELLANT EXPLOSIVES, CLASS B".

SUBPART C—FLAMMABLE LIQUIDS; DEFINITION AND PREPARATION

1. In § 73.135 amend paragraph (a) (9) (21 F. R. 7600, Oct. 4, 1956) to read as follows:

§ 73.135 *Dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.* (a) * * *

(9) Spec. MC 300, MC 303, or MC 304 of steel or stainless steel construction (§§ 78.321, 78.324 or 78.325 of this chapter). Tank motor vehicles.

2. In § 73.141 add paragraphs (a) (9) and (b) (16 F. R. 11777, Nov. 21, 1951) to read as follows:

§ 73.141 *Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.* (a) * * *

(9) Specification cylinders as prescribed for any compressed gas, except acetylene.

(b) Warning or odorizing devices containing not more than one ounce of a mercaptan or an aliphatic mercaptan mixture in a hermetically sealed container or in a hermetically sealed portion of the device are not subject to the regulations in Parts 71–78 and 197 of this chapter.

SUBPART D—FLAMMABLE SOLIDS AND OXIDIZING MATERIALS; DEFINITION AND PREPARATION

1. In § 73.153 add paragraphs (c) (65), (66), and (67) (15 F. R. 8303, Dec. 2, 1950) to read as follows:

§ 73.153 *Exemptions for flammable solids and oxidizing materials.* * * *

(c) * * *

(65) Hafnium metal powder or sponge, dry.

(66) Hafnium metal powder, wet or sludge.

(67) Dimethylhexane dihydroperoxide.

2. In § 73.157 amend the heading and introductory text of paragraph (a) (15 F. R. 8304, Dec. 2, 1950) to read as follows:

§ 73.157 *Benzoyl peroxide, chlorobenzoyl peroxide (para), dimethylhexane dihydroperoxide, lauroyl peroxide, or succinic acid peroxide, wet.* (a) Benzoyl peroxide, chlorobenzoyl peroxide (para), dimethylhexane dihydroperoxide, lauroyl peroxide, and succinic acid peroxide, wet with at least 30 percent of water by weight must be packed in specification containers as follows:

* * * * *

3. In § 73.158 amend the heading and introductory text of paragraph (a); amend paragraph (a) (3) (21 F. R. 7600, Oct. 4, 1956) to read as follows:

§ 73.158 *Benzoyl peroxide, dry, dimethylhexane dihydroperoxide, dry, lauroyl peroxide, dry, chlorobenzoyl peroxide (para), dry, or succinic acid peroxide, dry.* (a) Benzoyl peroxide, dry, dimethylhexane dihydroperoxide, dry, lauroyl peroxide, dry, chlorobenzoyl peroxide (para), dry, or succinic acid peroxide, dry, may be shipped when packed in specification containers as follows:

* * * * *

(3) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes, with inside fiber containers securely closed by taping or gluing, or inside securely closed paper bags lined with polyethylene not less than 0.002 inch thick, not over 1 pound capacity each. Except for lauroyl peroxide, dry, each inside container must be surrounded by asbestos or fire-resistant cushioning material which will protect the contents with equal efficiency. Gross weight in Spec. 12B65 boxes may be more than 65 but not more than 80 pounds provided net weight of contents does not exceed 50 pounds.

4. In § 73.187 amend paragraph (a) (1) (15 F. R. 8308, Dec. 2, 1950) to read as follows:

§ 73.187 *Peroxide of sodium.* (a) * * *

(1) Spec. 11A, 11B, 15A, 15B, 15C, 16A, or 19A (§§ 78.160, 78.161, 78.168, 78.169, 78.170, 78.185, or 78.190 of this chapter). Wooden barrels, kegs, or boxes, with inside containers which must be airtight metal cans.

5. In § 73.221 amend paragraphs (a) (2) and (3) (15 F. R. 8311, Dec. 2, 1950) to read as follows:

§ 73.221 *Liquid peroxides other than acetyl peroxide solution, acetyl benzoyl peroxide solution, cumene hydroperoxide, dicumyl peroxide, hydrogen peroxide, peracetic acid, and tertiary butylisopropyl benzene hydroperoxide.* (a) * * *

(2) Spec. 15A, 15B, 15C, 16A, or 19A (§§ 78.168, 78.169, 78.170, 78.185, or 78.190 of this chapter). Wooden boxes with inside containers which must be glass, earthenware, or metal, not over 1 gallon each, cushioned with incombustible packing material in sufficient quantity to absorb the contents of the inner container. Metal inside containers authorized only for materials which will not react dangerously with or be decomposed by contact with metal.

(3) Spec. 12B (§ 78.205 of this chapter). Fiberboard boxes with inside containers which must be glass, earthenware, or metal, not over 1 gallon each, cushioned with incombustible packing material in sufficient quantity to absorb the contents of the inner container. Not more than one 1-gallon inside container shall be packed in one outside fiberboard box. Metal inside containers authorized only for materials which will not react dangerously with or be decomposed by contact with metal.

6. In § 73.235 amend the heading and introductory text of (a) (21 F. R. 9356, Nov. 30, 1956) to read as follows:

§ 73.235 *Ammonium bichromate (ammonium dichromate).* (a) Ammonium bichromate (ammonium dichromate) must be packed in specification containers as follows:

* * * * *

SUBPART E—ACIDS AND OTHER CORROSIVE LIQUIDS; DEFINITION AND PREPARATION

1. In § 73.244 amend paragraph (c) (11) (15 F. R. 8313, Dec. 2, 1950) to read as follows:

§ 73.244 *Exemptions for acids and other corrosive liquids.* * * *

(c) * * *

(11) Bromotoluene, alpha.

2. In § 73.272 add paragraph (f) (3); cancel paragraphs (i) (5) and (6) (15 F. R. 8321, Dec. 2, 1950) (21 F. R. 673, Jan. 31, 1956) (21 F. R. 7601, Oct. 4, 1956) to read as follows:

§ 73.272 *Sulfuric acid.* * * *

(f) * * *

(3) Spec. 6J (§ 78.100 of this chapter). Steel barrels or drums having inside Spec. 2S (§78.35 of this chapter) polyethylene drum. Authorized for sulfuric acid concentrations not over 76 percent. Gross weight restriction indicated by the gross weight embossment in the steel barrels or drums shall be waived.

* * * * *

(i) * * *

(5) [Canceled.]

(6) [Canceled.]

3. In § 73.273 add paragraph (a) (5) (15 F. R. 8321, Dec. 2, 1950) to read as follows:

§ 73.273 *Sulfur trioxide, stabilized.* (a) * * *

(5) Spec. MC 310 and MC 311 (§§ 78.330 and 78.331 of this chapter). Tank motor vehicles. Authorized only for stabilized sulfur trioxide. Tanks must be equipped with spring-relief safety valves. Tanks equipped with interior heater coils not permitted.

4. In § 73.281 amend the heading and introductory text of paragraph (a) (15 F. R. 8322, Dec. 2, 1950) to read as follows:

§ 73.281 *Benzyl bromide (bromotoluene, alpha).* (a) Benzyl bromide (bromotoluene, alpha) must be packed in specification containers as follows:

* * * * *

SUBPART F—COMPRESSED GASES; DEFINITION AND PREPARATION

1. In § 73.306 amend paragraph (c) (1) (15 F. R. 8326, Dec. 2, 1950) to read as follows:

§ 73.306 *Liquefied gases, except acetylene in solution.* * * *

(c) * * *

(1) Spec. 2P (§ 78.33 of this chapter). Inside metal containers packed in strong wooden or fiber boxes of such design as to protect valves from injury or accidental functioning under conditions incident to transportation. Pressure in the container must not exceed 85 pounds per square inch absolute at 70° F. Each completed metal container filled for shipment must be heated until content reaches a minimum temperature of 130° F., without evidence of leakage, distortion or other defect. Each outside shipping container must be plainly marked "Inside containers comply with prescribed specifications".

2. In § 73.308 paragraph (a) table amend the entry "Dichlorodifluoromethane" (20 F. R. 951, Feb. 15, 1955) to read as follows:

§ 73.308 *Compressed gases in cylinders.* (a) * * *

Kind of gas	Maximum permitted filling density (see Note 12) (percent)	Cylinders (see Note 11) marked as shown in this column must be used except as provided in Note 1 and § 73.34 (a) to (e)
(*Change*) Dichlorodifluoromethane	119	ICC-3A225; ICC-3AA225; ICC-3B225; ICC-4A225; ICC-4B225; ICC-4BA225; ICC-4B240ET; ICC-9; ICC-41.

SUBPART G—POISONOUS ARTICLES; DEFINITION AND PREPARATION

1. In § 73.372 amend the heading and introductory text of paragraph (a) (15 F. R. 8338, Dec. 2, 1950) to read as follows:

§ 73.372 *Mercury bichloride (mercuric chloride).* (a) Mercury bichloride (mercuric chloride) must be packed in specification containers as follows:

* * * * *

2. In § 73.392 amend paragraph (c) (19 F. R. 6269, Sept. 29, 1954) to read as follows:

§ 73.392 *Exemptions for radioactive materials.* * * *

(c) Radioactive materials such as ores, residues, salts of natural uranium and thorium, etc., of low activity packed in strong tight containers are exempt from specification packaging and labeling requirements for shipments in carload lots by rail freight only, provided the gamma radiation or equivalent will not exceed 10 milliroentgens per hour at a distance of 12 feet from any surface of the car and that the gamma radiation or equivalent will not exceed 10 milliroentgens per hour at a distance of 5 feet from either end surface of the car. There must be no loose radioactive material in the car and the shipment must be braced so as to prevent leakage or shift of lading under conditions normally incident to transportation. The car must be placarded by the shipper as provided in §§ 74.541 (b) and 74.553 of this chapter. Except when handling is supervised by the Atomic Energy Commission, shipments must be loaded by consignor and unloaded by consignee.

PART 74—CARRIERS BY RAIL FREIGHT

SUBPART A—LOADING, UNLOADING, PLACARDING AND HANDLING CARS; LOADING PACKAGES INTO CARS

In § 74.532 amend paragraph (j) (1) (15 F. R. 8348, Dec. 2, 1950) to read as follows:

§ 74.532 *Loading other dangerous articles.* * * *

(j) * * *

(1) The amount of radioactive ores, residues, and similar materials loaded in a car must be limited as provided in § 73.392 of this chapter. The amount of any other radioactive materials loaded in a freight car shall be limited so that the quantity does not exceed 40 units as determined by totaling the number of units shown on the individual labels on the packages.

NOTE 1: For purposes of these regulations 1 unit equals 1 milliroentgen per hour at 1 meter for hard gamma radiation or the amount of radiation which has the same effect on film as 1 mrhm of hard gamma rays of radium filtered by ½ inch of lead.

SUBPART E—HANDLING BY CARRIERS BY RAIL FREIGHT

In § 74.586 add paragraph (h) (15 F. R. 8355, Dec. 2, 1950) to read as follows:

§ 74.586 *Handling explosives and other dangerous articles.* * * *

(h) A container of radioactive material bearing red label must not be placed in cars, depots or other places closer than 3 feet to an area which may be continuously occupied by passengers, employees, or shipments of animals. When more than one such container is present, the distance from occupied areas must be computed from the table in subparagraph (2) of this paragraph by adding the number of units shown on labels on the containers.

(1) In a combination car carrying passengers and/or express shipments, a container of radioactive material must not be placed closer than 3 feet to the dividing partition. For more than one such container the distance must be computed by method described in subparagraph (2) of this paragraph.

(2) A container of radioactive material, red label, must not be placed closer than 15 feet to any package containing undeveloped film. If more than one such container is present, the distance must be computed from the table in this subparagraph by adding the number of units shown on the labels on the packages.

TABLE

Total number of units	Minimum distance in feet to nearest undeveloped film	Distance in feet to area that may be continuously occupied by passengers or employees	Distance in feet from dividing partition of a combination car
1 to 10	15	3	3
11 to 20	20	4	4
21 to 30	25	5	5
31 to 40	30	6	6

NOTE 1: The distance in the table must be measured from the nearest point of the radioactive container or containers.

NOTE 2: 1 unit equals 1 milliroentgen per hour at 1 meter for hard gamma radiation or the amount of radiation which has the same effect on film as 1 mrhm. of hard gamma rays of radium filtered by ½ inch of lead.

(3) Not more than 40 units of radioactive material (red label) shall be transported in any car or stored in any location at one time.

(4) All containers of radioactive material (red label) must be carried by the handles when handles are provided.

PART 75—CARRIERS BY RAIL EXPRESS

In § 75.655 paragraph (j) (2) table amend the fourth column heading (15 F. R. 8359, Dec. 2, 1950) to read as follows: "Distance in feet from dividing partition of a combination car".

PART 78—SHIPPING CONTAINER SPECIFICATIONS

SUBPART C—SPECIFICATIONS FOR CYLINDERS

In § 78.55–2 amend paragraph (a) (15 F. R. 8417, Dec. 2, 1950) to read as follows:

§ 78.55 *Specification 4B240ET; welded and brazed cylinders made from electric resistance welded tubing.*

§ 78.55–2 *Type, spinning process, size and service pressure*—(a) *Type.* Cylinders must be of brazed type made from electric resistance welded tubing which has been certified to have been pressure tested to a fiber stress of 24,000 pounds per square inch, as calculated by the formula:

$$P=\frac{24{,}000(D^2-d^2)}{(1.3D^2+0.4d^2)}$$

where P is the pressure required for pressure testing of tubing. Pressure shall be maintained for not less than 30 seconds. Lengths of tubing that leak must be rejected. No repairs permitted.

SUBPART E—SPECIFICATIONS FOR WOODEN BARRELS, KEGS, BOXES, KITS, AND DRUMS

1. In § 78.165–8 (a) table amend the subcolumn heading "Ends" by inserting a reference to a footnote 3; add footnote 3 to paragraph (a) table (15 F. R. 8460, Dec. 2, 1950) to read as follows:

[3] As provided by § 73.65 (a) (1), Note 1, of this chapter, boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

2. In § 78.168–3 add paragraph (b) (15 F. R. 8460, Dec. 2, 1950) to read as follows:

§ 78.168 *Specification 15A; wooden boxes, nailed.*

§ 78.168–3 *Ends.* * * *

(b) As provided by § 73.65 (a) (1), Note 1, of this chapter, wooden boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end

which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

3. In § 78.185–9 add paragraph (b) (15 F. R. 8470, Dec. 2, 1950) to read as follows:

§ 78.185 *Specification 16A; plywood or wooden boxes, wirebound.*

§ 78.185–9 *Ends.* • • •

(b) As provided by § 73.65 (a) (1), Note 1, of this chapter, wooden boxes, having inside metal containers which are tightly and securely closed, may be equipped with hand holes in each end which must be not more than one inch by four inches and centered laterally not nearer than 1⅝ inches from top edge of end of box.

SUBPART F—SPECIFICATIONS FOR FIBERBOARD BOXES, DRUMS, AND MAILING TUBES

1. In § 78.209–8 paragraph (a) (2) add Note 1 (20 F. R. 8110, Oct. 28, 1955) to read as follows:

§ 78.209 *Specification 12H; fiberboard boxes.*

§ 78.209–8 *Type authorized.* (a) • • •

(2) • • •

NOTE 1: Hand-holes oval in shape, not more than 1 inch in width by 3 inches in length, and horizontal with top score line, are authorized in ends of top section of boxes.

2. In § 78.219–7 add paragraph (b) (17 F. R. 1564, Feb. 20, 1952) to read as follows:

§ 78.219 *Specification 23H; fiberboard boxes.*

§ 78.219–7 *Type authorized.* • • •

(b) Hand-holes oval in shape, not more than 1 inch in width by 3 inches in length and horizontal with top score line, are authorized in ends of top section of full depth cover telescope type boxes.

SUBPART I—SPECIFICATIONS FOR TANK CARS

1. In § 78.281–21 amend paragraph (a) (1) (22 F. R. 4794, July 9, 1957) to read as follows:

§ 78.281 *Specification ICC–103A–W; fusion-welded steel tanks to be mounted on or forming part of a car.*

§ 78.281–21 *Marking.* (a) • • •

(1) ICC–103A–W in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. If tanks are fabricated from ASTM A–212 Grade A or B steel, the specification number of this material must also be stamped in letters and figures at least ⅜ inch high into the metal near the center of both outside heads by the tank builder. ICC–103A–W must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car.

2. In § 78.282–20 amend paragraph (a) (1) (22 F. R. 4794, July 9, 1957) to read as follows:

§ 78.282 *Specification ICC–103B–W; rubber lined fusion-welded steel tanks to be mounted on or forming part of a car.*

§ 78.282–20 *Marking.* (a) • • •

(1) ICC–103B–W in letters and figures at least ⅜ inch high stamped plainly and permanently into the metal near the center of both outside heads of the tank by the tank builder. If tanks are fabricated from ASTM A–212 Grade A or B steel, the specification number of this material must also be stamped in letters and figures at least ⅜ inch high into the metal near the center of both outside heads by the tank builder. ICC–103B–W must also be stenciled on the tank, or jacket if lagged, in letters and figures at least 2 inches high by the party assembling the completed car.

3. In § 78.299–8 amend the section heading, and add paragraph (b) (21 F. R. 4623, June 26, 1956) to read as follows:

§ 78.299 *Specification ICC–103A–N–W; fusion-welded nickel or nickel alloy tanks to be mounted on or forming part of a car.*

§ 78.299–8 *Manway rings, safety vent flange, or other attachments.* • • •

(b) Botton washout nozzle may be riveted or fusion-welded. Riveted joints must be made metal to metal without interposition of other materials. Rivets, if used, must be driven hot and calked inside. For computing areas the effective diameter of a driven rivet is the diameter of its hole, which hole must in no case exceed nominal diameter of rivet by more than 1/16 inch. Use of rivets of less than ⅝ inch diameter prohibited. Joints formed by attachment to tank must be calked on the inside. Fusion welding for securing this attachment to tank must be as prescribed in paragraph (a) of this section.

SUBPART J—SPECIFICATIONS FOR CONTAINERS FOR MOTOR VEHICLE TRANSPORTATION

1. In § 78.321–12 paragraph (a) amend the heading of Table I, and amend the heading of Table III in paragraph (b); amend entire § 78.321–13; in § 78.321–18 amend the section heading and paragraph (a), the introductory text of paragraph (b), paragraph (b) (2), and add paragraph (b) (6) (16 F. R. 11785, Nov. 21, 1951) (21 F. R. 7610, Oct. 4, 1956) (15 F. R. 8546, Dec. 2, 1950) to read as follows:

§ 78.321 *Specification MC 300; cargo tanks constructed of mild (open hearth or blue annealed) steel, or combination of mild steel with high-tensile steel, or of stainless steel.*

§ 78.321–12 *Thickness of steel sheets.* (a) • • •

TABLE I—MINIMUM THICKNESS OF HEADS,[1] BULKHEADS, BAFFLES (DISHED, CORRUGATED, REINFORCED, OR ROLLED) AND RING STIFFENERS

• • • • •

(b) *Thickness of high-tensile and stainless steel sheets.* • • •

TABLE III—MINIMUM THICKNESS OF HEADS,[1] BULKHEADS, BAFFLES (DISHED, CORRUGATED, REINFORCED, OR ROLLED) AND RING STIFFENERS

§ 78.321–13 *Cargo tanks constructed of a combination of mild and high-tensile steels or stainless steel.* (a) Mild steel sheets as specified in § 78.321–12 (a) may be used in combination with high-tensile steel sheets or stainless steel sheet as specified in § 78.321–12 (b) in the construction of a single tank, provided each material, where used, shall comply with the minimum requirements for the material used in the construction for that section of the tank. Whenever stainless steel sheets are used in combination with sheets of other types of steel, joints made by welding shall be formed by the use of stainless steel electrodes or filler rods on condition that the stainless steel electrodes or filler rods used in the welding be suitable for use with the grade of stainless steel concerned, according to the recommendations of the manufacturer of the stainless steel electrodes or filler rods.

§ 78.321–18 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

• • • • •

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

• • • • •

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR STEEL RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0104*L*.[1]
Over 42 inches to 60 inches	0.0162*L*.[1]
Over 60 inches to 96 inches	0.0234*L*.[1]

[1] *L* is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener be-

tween welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

2. In § 78.322–12 amend the section heading and paragraph (a) table; in § 78.322–18 amend the section heading and paragraph (a), amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8548, Dec. 2, 1950) to read as follows:

§ 78.322 *Specification MC 301; cargo tanks constructed of welded aluminum alloy (grade 3S).*

§ 78.322–12 *Thickness of sheets and ring stiffeners.* (a) The minimum thickness of tank sheets and ring stiffeners shall be as follows:

Aggregate capacity, United States gallons	Shell		Head, dished, corrugated, or reinforced, and ring stiffener	
	United States gauge No.	Inch [1]	United States gauge No.	Inch [1]
600 or less	12	0.109	12	0.109
Over 600 to 1,200	9	.156	9	.156
Over 1,200:				
(a) Divided into compartments of 600 gallons or less	9	.156	6	.203
(b) If not divided into compartments, or if divided into compartments of 1,200 or more	6	.203	4	.234

[1] Approximate.

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.322–18 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles for ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffiles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR ALUMINUM RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0180*L*.[1]
Over 42 inches to 60 inches	0.0280*L*.[1]
Over 60 inches to 96 inches	0.0400*L*.[1]

[1] *L* is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

3. In § 78.323–12 amend the section heading and paragraph (a) table; in § 78.323–18 amend the section heading and paragraph (a), amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8550, 8551, Dec. 2, 1950) to read as follows:

§ 78.323 *Specification MC 302; cargo tanks constructed of welded aluminum alloy (ASTM B178–54T).*

§ 78.323–12 *Thickness of sheets and ring stiffeners.* (a) The minimum thickness of tank sheets and ring stiffeners shall be as follows:

Aggregate capacity, United States gallons	Shell		Head, dished, corrugated, or reinforced, and ring stiffener	
	United States gauge No.	Inch [1]	United States gauge No.	Inch [1]
600 or less	14	0.078	14	0.078
Over 600 to 1,200	12	.109	12	.109
Over 1,200:				
(a) Divided into compartments of 600 gallons or less	12	.109	10	.141
(b) If not divided into compartments, or if divided into compartments of 1,200 or more	10	.141	8	.172

[1] Approximate.

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.323–18 *Bulkheads, baffles and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR ALUMINUM RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	0.0180*L*.[1]
Over 42 inches to 60 inches	0.0280*L*.[1]
Over 60 inches to 96 inches	0.0400*L*.[1]

[1] *L* is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

4. In § 78.324–12 paragraph (a) amend the entire table 1; in § 78.324–17 amend the section heading and paragraph (a),

amend the introductory text of paragraph (b), amend paragraph (b) (2), and add paragraph (b) (6) (15 F. R. 8552, 8553, Dec. 2, 1950) to read as follows:

§ 78.324 *Specification MC 303; cargo tanks constructed of welded ferrous alloy (high-tensile steel) or stainless steel.*

§ 78.324–12 *Thickness of sheets.* (a) * * *

TABLE 1—MINIMUM THICKNESS OF HEAD, BULKHEAD, BAFFLE SHEETS AND RING STIFFENERS

Distances between bulkhead attachments to shell in inches	Volume capacity of tank in gallons per inch of length									
	6 or less		Over 6 to 10		Over 10 to 14		Over 14 to 18		Over 18	
	Bulkhead and baffle (dished, corrugated, or reinforced) sheet and ring stiffener thicknesses in United States gauge numbers and inches depending upon distances between attachments thereof to shell									
	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.	Gauge No.	In. appr.
30 inches or less	17	0.056	16	0.062	15	0.070	14	0.078	13	0.094
Over 30 inches	16	.062	15	.070	14	.078	13	.094	12	.109

NOTE 1: Flat heads without reinforcement no longer permitted.

§ 78.324–17 *Bulkheads, baffles, and ring stiffeners.* (a) No bulkheads shall be required in any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than eighty percent (80%) full or in which no compartment of the tank is ever loaded less than eighty percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point.

(b) *Number, dimensions and capacities of bulkheads, baffles, and ring stiffeners.* Except as provided in paragraph (a) of this section, every cargo tank shall be divided into compartments and/or provided with baffles or ring stiffeners as follows:

* * * * *

(2) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.).

* * * * *

(6) (i) Ring stiffeners shall be continuous around the circumference of the tank shell, and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR STEEL RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	$0.0104L$.[1]
Over 42 inches to 60 inches	$0.0162L$.[1]
Over 60 inches to 96 inches	$0.0234L$.[1]

[1] L is the maximum distance from midpoint of unsupported shell on one side of ring stiffener to the midpoint of unsupported shell on the opposite side of the ring stiffener.

(ii) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

5. In § 78.325–8 paragraph (d) amend the first line in the first column in the first and third tables, now reading, "Heads, bulkheads and baffles" to read "Heads, bulkheads, baffles, and ring stiffeners"; in § 78.325–9 amend the section heading, and amend paragraph (d); in § 78.325–14 amend paragraphs (a) and (b) (20 F. R. 8113, 8114, Oct. 28, 1955) (22 F. R. 2237, April 4, 1957) to read as follows:

§ 78.325 *Specification MC 304 for cargo tanks for the transportation of flammable liquids and poisonous liquids, class B having Reid (ASTM D–323) vapor pressures of 18 pounds per square inch absolute at 100° F.*

§ 78.325–9 *Bulkheads, baffles, and ring stiffeners.* * * *

(d) (1) Baffles or shell stiffeners: Every cargo tank or compartment of a cargo tank over ninety inches (90 in.) in length shall be provided with baffles or equivalent shell stiffeners so located that the maximum distance between any two baffles or stiffeners and between any baffle or stiffener and the nearest tank head or bulkhead shall not exceed sixty inches (60 in.). Ring stiffeners shall be continuous around the circumference of the tank shell and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR RING STIFFENERS

Width of tank	Section modulus	
	Steel	Aluminum
42 inches or less	$0.0104\ L$ [1]	$0.0180\ L$.[1]
Over 42 inches to 60 inches	$0.0162\ L$ [1]	$0.0280\ L$.[1]
Over 60 inches to 96 inches	$0.0234\ L$ [1]	$0.0400\ L$.[1]

[1] L is the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

§ 78.325–14 *Safety devices*—(a) *Safety relief devices required.* Each tank and each compartment of a tank shall be provided with one or more safety relief valves of the springloaded type, provided that emergency pressure relief devices may be used for part of the required capacity thereof. All such valves and devices shall be arranged to discharge upward and unobstructed in such a manner as to prevent any impingement of escaping gas upon the tank. The emergency pressure relief devices shall be either springloaded type or frangible type.

(b) *Relief device capacity.* The required safety relief valves shall be set to close after discharge at a pressure not lower than 25 pounds per square inch gauge (25 psig.), and remain closed at all lesser pressures, provided that this requirement shall not be so construed as to forbid the use of vacuum relief valves or of combination safety relief and vacuum relief valves. At a pressure not exceeding 40 pounds per square inch gauge (40 psig.) they shall have a discharge capacity not less than that of an unobstructed opening of one square inch (1 sq. in.) for each 35 square feet (35 sq. ft.) of exterior area of the tank or compartment to which they are connected, provided that two or more such valves may be used on the same tank or compartment to obtain the discharge capacity herein required; alternatively, such valve or valves may at a pressure of 30 pounds per square inch gauge (30 psig.) have a total discharge capacity not less than that of an unobstructed opening of one square inch (1 sq. in.) for each 350 square feet (350 sq. ft.) of exterior area of the tank or compartment to which they are connected, if in addition thereto each such tank or compartment be provided with one or more frangible-type safety devices having a total discharge capacity not less than that of an unobstructed opening of nine square inches (9 sq. in.) for each 350 square feet (350 sq. ft.) of exterior area and bursting pressure not less than 30 pounds per square inch gauge (30 psig.) nor more than 40 pounds per square inch gauge (40 psig.).

6. Add § 78.326 (15 F. R. 8554, Dec. 2, 1950) to read as follows:

§ 78.326 *Specification MC 305; cargo tanks constructed of aluminum alloys for high-strength welded construction.* To be mounted on and to form part of tank motor vehicles for transportation of flammable liquids and poisonous liquids, class B.

§ 78.326–1 *Scope.* (a) This specification is primarily designed to apply to cargo tanks of tank motor vehicles to be used for the transportation of flammable liquids, or poisonous liquids, class B.

§ 78.326–2 *New cargo tank motor vehicles.* (a) A certificate from the manufacturer of the cargo tank, or from a competent testing agency, certifying that each such cargo tank is designed and constructed in accordance with the requirements of this specification shall be procured, and such certificate shall be retained in the files of the carrier during the time that such cargo tank motor vehicle is employed in the transportation of flammable liquids or poisonous liquids, class B by him. In lieu of this certificate, if the motor carrier himself elects to ascertain if any such cargo tank fulfills the requirements of the specification by his own test, he shall similarly retain the test data.

§ 78.326–3 *Novel cargo tanks of tank motor vehicles, special authorization.* (a) The Commission may, upon written request for such authorization by a motor carrier, authorize the use of limited numbers, and for limited times, of new cargo tank motor vehicles which fail to meet the requirements of this specification. In the event of such authorization, the carrier shall furnish those details concerning the design and construction of the tank as seem necessary for the determination of its ability safely to transport flammable liquids or poisonous liquids, class B.

§ 78.326–4 *Marking of cargo tanks—* (a) *Metal identification plate.* There shall be on every cargo tank a metal plate located on the right side, near the front, in a place readily accessible for inspection. This plate shall be permanently affixed to the tank by means of soldering, brazing, welding, or other equally suitable means; and upon it shall be marked by stamping, embossing, or other means of forming letters into or on the metal of the plate itself, in the manner illustrated below, at least the information indicated below. The plate shall not be so painted as to obscure the markings thereon.

Carrier's serial number [1]
Manufacturer's name
Date of manufacture
ICC MC 305

Nominal tank cap'y---------- U. S. gallons

(b) *Test date markings.* The date of the last test or retest required by this specification and the due date of the next required routine test or retest shall be painted on the tank in letters not less than 1¼ inches high, in legible colors, immediately below the metal identification plate specified in paragraph (a) of this section.

(c) *Certification by markings.* The markings specified in paragraphs (a) and (b) of this section shall serve to certify that the tank complies with all requirements of this specification.

[1] Carriers are not required to number their cargo tanks serially; any designation regularly used by the carrier to identify the tank may be put in this space.

§ 78.326–5 *No hazardous repairs on loaded motor vehicles.* (a) No repairs shall be performed on any motor vehicle containing any flammable liquid or poisonous liquid, class B, or on a cargo tank, whether empty or loaded, except in such cases that such repair can be made without hazard; nor shall any such loaded motor vehicle be repaired in a closed garage.

§ 78.326–6 *No repair with flame unless gas-free.* (a) No repair of a cargo tank used for the transportation of any flammable liquid or poisonous liquid, class B, or any compartment thereof, or of any container for fuel of whatever nature, may be repaired by any method employing a flame, arc, or other means of welding, unless the tank or compartment shall first have been made gas-free.

§ 78.326–7 *Times of retesting of cargo tanks.* Every cargo tank used for the transportation of any flammable liquid or poisonous liquid, class B, shall be tested or retested as follows:

(a) *Tank out of service one year or more.* Every cargo tank which has been out of transportation service for a period of one year or more shall not be returned again to or placed in such service until it shall successfully have fulfilled the requirements set forth under § 78.326–8.

(b) *Specification tanks.* Every cargo tank complying with the requirements of this specification shall be tested at least once in every 5 year period. If tested no oftener than once in every 5 years, at least one such test shall be made in the last year of any such 5 year period. The time of reckoning for such testing of such cargo tanks shall be from the time of the last test made in accordance with the requirements set forth under § 78.326–8; and if no such tests have ever been made, such tanks shall be tested within 6 months after March 19, 1958.

(c) *Novel cargo tanks.* Every cargo tank which shall have been authorized by this Commission for transportation of flammable liquids or poisonous liquids, class B under the provisions of § 78.326–3 shall be tested under requirements specifically set forth in the terms of such authorization.

(d) *Testing following accidents.* Every cargo tank capable of suitable repair following any accident in which a tank motor vehicle may have been involved shall be retested in accordance with the requirements set forth under § 78.326–8; if the cargo tank has itself been damaged in a manner likely to affect the safety of operation of the tank motor vehicle, or if the damage to the tank motor vehicle is such as to make the safety of the cargo tank uncertain.

(e) *Special testing required by the Commission.* Upon the showing of probable cause of the necessity for retest, the Commision may, in its discretion, cause any cargo tank to be retested in accordance with the requirements of § 78.326–8 at any time.

§ 78.326–8 *Test for leaks.* (a) Every cargo tank shall be tested by a minimum air or hydrostatic pressure of 3 pounds per square inch gauge applied to the whole tank and dome if it be non-compartmented. If compartmented, each individual compartment shall be similarly tested with adjacent compartments empty and at atmospheric pressure. Air pressure, if used, shall be maintained for a period of at least five minutes during which the entire surface of all joints under pressure shall be coated with a solution of soap and water, heavy oil, or other material suitable for the purpose, foaming or bubbling of which indicates the presence of leaks. Hydrostatic pressure, if used, shall be done by using water or other liquid having a similar viscosity, the temperature of which shall not exceed 100° F. during the test, and applying pressure as prescribed above, gauged at the top of the tank, at which time all joints under pressure shall be inspected for the issuance of liquid to indicate leaks. All closures shall be in place while test by either method is made. During these tests, operative relief devices shall be clamped, plugged, or otherwise rendered inoperative; such clamps, plugs, and similar devices shall be removed immediately after the test is finished. Any leakage discovered by either of the methods above described, or by any other method, shall be deemed evidence of failure to meet the requirements of this specification. Tanks failing to pass this test shall be suitably repaired, and the above described tests shall be continued until no leaks are discovered, before any cargo tank is put into service.

(b) Every cargo tank to which this specification applies shall be tested by pressure prescribed in paragraph (a) of this section and shall withstand such pressure without undue distortion, evidence of impending failure, or failure. Failure to meet this requirement shall be deemed sufficient cause for rejection under this specification. If there is undue distortion, or if failure impends or occurs, the cargo tank shall not be returned to service unless a suitable repair is made. The suitability of the repair shall be determined by the same method of test.

§ 78.326–9 *Workmanship, general.* (a) Every cargo tank shall be constructed in accordance with the best known and available practices, in addition to the other requirements of this specification.

§ 78.326–10 *Material.* (a) All sheets for shell, heads, bulkheads, and baffles of such cargo tanks shall be of aluminum alloys GR20A (5052 commercial designation) GR40A (5154 commercial designation) or GM40A (5086 commercial designation) conforming to American Society for Testing Materials Specification B178–54T.

§ 78.326–11 *Thickness of sheets.* (a) The minimum thicknesses of tank sheets shall be limited by the volume capacity of the tank, expressed in terms of gallons per inch of length; by the distance between successive bulkheads in the case of bulkhead sheets; and by the distance between bulkheads, baffles, or other shell stiffeners as well as by the radius of shell curvature in the case of shell sheets; as follows:

TABLE I—THICKNESS OF HEAD, BULKHEAD, BAFFLE SHEETS AND RING STIFFENERS [1]

	Volume capacity of tank in gallons per inch of length			
	10 or less	Over 10 to 14	Over 14 to 18	Over 18
	Heads or bulkheads—dished, corrugated or reinforced			
Thickness in decimal of inches	0.096	0.109	0.130	0.151

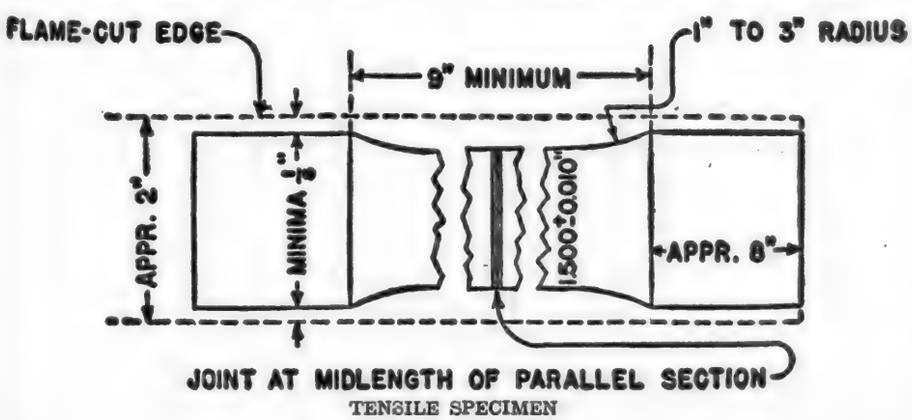
[1] Thickness of exterior head sheets shall never be less than the maximum requirements for shell sheets.

TABLE II—THICKNESS OF SHELL SHEETS

Distance between bulkheads, baffles or other shell stiffeners	Volume capacity of tank in gallons per inch of length			
	10 or less	Over 10 to 14	Over 14 to 18	Over 18
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of less than 70 inches, depending on spacing of shell stiffeners			
36 inches or less	0.087	0.087	0.096	0.109
Over 36 inches to 54 inches	.087	.097	.109	.130
Over 54 inches	.096	.109	.130	.151
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 70 inches or more, but less than 90 inches, depending on spacing of shell stiffeners			
36 inches or less	0.087	0.096	0.109	0.130
Over 36 inches to 54 inches	.096	.109	.130	.151
Over 54 inches	.109	.130	.151	.173
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 90 inches or more, but less than 125 inches, depending on spacing of shell stiffeners			
36 inches or less	0.096	0.109	0.130	0.151
Over 36 inches to 54 inches	.109	.130	.151	.173
Over 54 inches	.130	.151	.173	.194
	Shell-sheet thickness in decimals of an inch for that portion of the shell rolled to a radius of 125 inches or more, depending on spacing of shell stiffeners			
36 inches or less	0.109	0.130	0.151	0.173
Over 36 inches to 54 inches	.130	.151	.173	.194
Over 54 inches	.151	.173	.194	.216

§ 78.326–12 *Joints*—(a) *Method of joining.* All joints in and to tank shells, head and bulkheads shall be welded.

(b) *Strength of joints.* All welded aluminum joints shall be made in accordance with recognized good practice, and the efficiency of a joint shall not be less than 85 percent of the annealed properties of the material in question. Aluminum alloys for high-strength welded construction shall be joined by an inert gas arc welding process using filler metals R–GR40A, E–GR40A (5154 alloy) or R–GM50A, E–GM50A (5356 alloy) conforming to American Society of Testing Materials Specification No. B285–54T (American Welding Society Specification No. A5, 10–54T). Compliance with this requirement shall be determined by preparing from materials representative of those to be used in tanks subject to this specification and by the same technique of fabrication, two (2) test specimens conforming to figure as shown below and testing them to failure in tension. One pair of test specimens may represent all the tanks to be made of the same combination of materials, by the same technique of fabrication, and in the same shop, within six (6) months after the tests on such samples have been completed.



TENSILE SPECIMEN

§ 78.326–13 *Tank outlets.* (a) Outlet fixtures of tanks shall be substantially made and attached to the tank in such a manner as to prevent breakage at the outlet point.

§ 78.326–14 *Bulkheads, baffles and ring stiffeners*—(a) *When bulkheads not required.* The bulkhead requirement in subparagraph (b) of this section does not apply to any cargo tank, regardless of capacity, which is used in a service in which the entire tank is never loaded less than 80 percent (80%) full or in which no compartment of the tank is ever loaded less than 80 percent (80%) full, provided that the entire contents of the tank or of one or more compartments of the tank is discharged at each unloading point. Flat bulkheads and baffles without reinforcement not permitted.

(b) *When bulkheads required.* Except as provided in paragraph (a) of this section every cargo tank having a total capacity in excess of 1,800 gallons shall be divided by bulkheads into compartments, none of which shall exceed 1,200 gallons. Each bulkhead required by this paragraph shall be of the same minimum strength as is required elsewhere in this specification for tank heads.

(c) *Double bulkheads.* Tanks with compartments carrying flammable liquids of different shipping names or with compartments containing flammable or poisonous liquids, class B and liquids not so classified by the regulations, shall be provided with an air space between compartments. This air space shall be arranged for venting and be equipped and maintained with drainage facilities operative at all times.

(d) *Baffles or shell stiffeners.* (1) Every cargo tank, and every compartment of a cargo tank over ninety inches (90 in.) in length, shall be provided with baffles or ring stiffeners, the number of which shall be such that the linear distance between any two adjacent baffles or ring stiffeners, or between any tank head or bulkhead and the baffle or ring stiffener nearest it, shall in no case exceed sixty inches (60 in.). Ring stiffeners shall be continuous around the circumference of the tank shell and shall have at least the section modulus required by the following table:

MINIMUM SECTION MODULUS REQUIRED FOR RING STIFFENERS

Width of tank	*Section modulus*
42 inches or less	$0.0180L.^{1}$
Over 42 inches to 60 inches	$0.0280L.^{1}$
Over 60 inches to 96 inches	$0.0400L.^{1}$

[1] *L* is the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the shell, a portion of the shell may, for purposes of computing the section modulus, be considered as a part of the ring section. If welded at one side of the ring stiffener only, such portion shall not exceed twenty (20) times the shell thickness adjacent to the weld. If welded at both sides of the ring stiffener, such portion shall not exceed forty (40) times the shell thickness adjacent to the weld, or the width of the ring stiffener between welds plus twenty (20) times the shell thickness adjacent to the welds, whichever is less.

§ 78.326–15 *Tank vents.* (a) Each tank or tank compartment shall be provided with a vacuum and pressure operated vent with a minimum effective opening of forty-four hundredths of a square inch (0.44 sq. in.), and shall also be provided with an emergency venting facility so constructed as to provide a minimum free-venting opening having a net area in square inches equal to 1.25 plus 0.0025 times the capacity of the tank or compartment in gallons. If the emergency venting facility operates in response to elevated temperatures, the critical temperature for such operation shall not exceed two hundred degrees Fahrenheit (200° F.).

§ 78.326–16 *Valve and faucet connections.* (a) All draw-off valves or faucets of tanks and compartments shall have discharge ends threaded, or be otherwise so designed as to insure in every instance a tight connection with the hose extending to the storage fill pipe.

§ 78.326–17 *Emergency discharge control.* (a) Each tank or tank compartment of a bottom-discharge tank shall be equipped with a reliable and effective shut-off valve located inside the shell of the tank or tank compartment in the tank or compartment outlet. The operating mechanism for such valve or valves shall be provided with a secondary closing mechanism remote from tank filling openings and discharge faucets, for operation in the event of fire or other accident. Such control mechanism shall also be provided with a fusible section which will cause the valve to close automatically in case of fire, and the critical temperature for the fusing of such section shall not exceed two hundred degrees Fahrenheit (200° F.).

§ 78.326–18 *Shear section.* (a) There shall be provided between each shut-off valve seat and discharge faucet a shear section which will break under strain, unless the discharge piping is so arranged as to afford equivalent protection, and leave the shut-off valve seat intact in case of accident to the discharge faucet or piping.

§ 78.326–19 *Protection of valves and faucets.* (a) Draw-off valves and faucets projecting beyond the frame, or if the vehicle be frameless, beyond the shell, at the rear, shall be adequately protected by steel bumpers or other equally effective devices, against collision.

§ 78.326–20 *Overturn protection.* (a) All closures for filling openings shall be protected from damage in the event of overturning of the motor vehicle by being enclosed within the body of the tank or dome attached thereto or by the use of suitable metal guards securely attached to the tank or the frame of the motor vehicle. Protection shall also be provided for any protruding or projecting fitting or appurtenance by means of adequate metal guards. The calculated load for the protective devices shall be the weight of the tank motor vehicle with the tank full of water, at one "g" deceleration. If the overturn protection is so constructed as to permit accumulation of liquid on the top of the tank, it shall not be provided with drainage facilities which will permit drainage at or near the front of the tank.

§ 78.326–21 *Tank supports.* (a) The distance from a tank support to the nearest bulkhead, baffle, or other shell stiffener, shall not exceed forty (40) times the thickness of the tank shell at the point of support.

§ 78.326–22 *Anchoring of tank.* (a) Adequate hold-down devices shall be provided to anchor each cargo tank in a suitable manner that will not introduce undue concentration of stresses and shall be built to withstand loadings in any direction equal to the weight of the tank and attachments when filled with water. These devices on vehicles with frames shall incorporate turnbuckles or similar positive action devices drawing the tank down tight on the frame of the motor vehicle.

(b) *Stops and anchors.* Suitable stops and anchors shall be attached to the motor vehicle and the tank to prevent movement between them due to starting, stopping and turning. These stops or anchors shall be installed so as to be readily accessible for inspection and maintenance except that lagging for lagged tanks is permitted to cover such stops and anchors.

(c) *Anchoring integral tanks.* Whenever any cargo tank is so designed and constructed that the cargo tank constitutes, in whole or in part, the stress member used in lieu of a frame, then such cargo tanks shall be designed so as to successfully and adequately withstand the stresses thereby imposed in addition to those otherwise imposed on the tank.

§ 78.326–23 *Pumps.* (a) Liquid pumps, whenever used, must be of suitable design, adequately protected against breakage by collisions, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

7. In § 78.330–8 amend paragraph (a) (15 F. R. 8555, Dec. 2, 1950) to read as follows:

§ 78.330 *Specification MC 310; cargo tanks.*

§ 78.330–8 *Must comply with A. S. M. E. Code.* (a) Tanks built under this specification shall be designed and constructed in accordance with the A. S. M. E. Code for Unfired Pressure Vessels, 1949, 1950, or 1952 editions, no revisions, which is hereinafter referred to as "the Code".

8. In § 78.331–8 amend paragraph (a); in § 78.331–9 amend paragraph (a) (18 F. R. 6783, 6784, Oct. 27, 1953) to read as follows:

§ 78.331–*Specification MC 311; cargo tanks.*

§ 78.331–8 *Design requirements*—(a) *A. S. M. E. Code construction.* Cargo tanks built of ferrous materials under this specification that are unloaded by pressure must be built of welded construction in accordance with the A. S. M. E. Code for Unfired Pressure Vessels, 1949, 1950, or 1952 editions—no revisions, except that for sheet thicknesses of less than 3/16 inch wherein the Code specifies both minimum and maximum limits of tensile value of materials, the maximum limits need not apply. Such tanks shall not have head, bulkhead, baffle or shell thicknesses less than that specified in paragraphs (c) and (d) of this section, nor shall the spacing of bulkheads, baffles, or shell stiffeners exceed that specified in those sections.

§ 78.331–9 *Materials.* * * *

(a) *A. S. M. E. Code materials.* Cargo tanks required to comply with the A. S. M. E. Code for Unfired Pressure Vessels must be manufactured of materials authorized by the Code except that for sheet thicknesses of less than 3/16 inch wherein the Code specifies both minimum and maximum limits of tensile value of materials, the maximum limits need not apply.

[F. R. Doc. 57–10822; Filed, Dec. 30, 1957; 8:47 a. m.]

TITLE 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

CONFIRMATION OF ALL REGULATIONS AND OTHER FORMAL ISSUES PROMULGATED BY OR PURSUANT TO THE AUTHORITY OF HARVEY V. HIGLEY, FORMER ADMINISTRATOR OF VETERANS AFFAIRS, TO BECOME EFFECTIVE AFTER TERMINATION OF HIS APPOINTMENT

All Veterans Administration regulations, manuals, instructions, bulletins, circulars, and other issues applicable to the Veterans Administration which were approved by or pursuant to the authority of the former Administrator of Veterans Affairs, Harvey V. Higley, to become effective on a date subsequent to the termination of his appointment are hereby confirmed and approved as though the same had been approved by me, and the same shall remain in full force and effect until such time as they may be specifically amended or revoked.

[SEAL] SUMNER G. WHITTIER,
Administrator of Veterans Affairs.

DECEMBER 23, 1957.

[F. R. Doc. 57–10887; Filed, Dec. 30, 1957; 8:54 a. m.]

PART 4—DEPENDENTS AND BENEFICIARIES CLAIMS

MISCELLANEOUS AMENDMENTS

1. In § 4.168, the headnote, introductory portion of paragraph (a), and subparagraphs (1) and (9) of paragraph (a) are amended to read as follows:

§ 4.168 *Jurisdiction of rating boards*—(a) *General duties.* Rating boards are vested with authority, as rating agencies of original jurisdiction, to render rating decisions and to take other actions requiring board consideration in death claims for death compensation, dependency and indemnity compensation or death pension, reimbursement for burial, funeral, and transportation expenses, accrued compensation, pension, or retirement pay, servicemen's indemnity, insurance, unauthorized medical expenses, and such other benefits as require a rating determination under law or regulations. In this connection the boards pass on all questions essential to the decisions or other actions, including determinations as to jurisdiction, admissibility of evidence and weight to be accorded such evidence, the necessity of further development of evidence, the necessity of physical examination or of rescheduling for physical examination of claimants or beneficiaries, and the proper application of the provisions of all pertinent laws, regulations, schedules of disability ratings, policy statements, procedures, Administrator's decisions, and other legal precedents. Specifically, such boards will be responsible for rating determinations on the following major conditions relating to entitlement.

(1) Service connection of diseases or injuries, including line of duty, willful misconduct, or vicious habits determinations, as required. These decisions may be made for administrative purposes (including life insurance purposes, when requested) as well as for death compensation, dependency and indemnity compensation or death pension and accrued disability compensation or pension.

* * * * *

(9) Entitlement under section 31, Public Law 141, 73d Congress, as amended, under section 12, Public Law 866, 76th Congress, under paragraph 4, Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12A) (Public Law 16, 78th Cong.), and Public Law 894, 81st Congress.

2. In § 4.169, the headnote and the introductory portion of paragraph (a) preceding subparagraph (1) are amended to read as follows:

§ 4.169 *Special jurisdiction of rating boards in Veterans Benefits Office, D. C.* (a) In exercise of the functions specified in § 4.168, the rating boards, Compensation and Pension Service, in the Veterans Benefits Office, D. C., will have jurisdiction over the following types of death cases:

3. In § 4.184, paragraph (a) is amended to read as follows:

§ 4.184 *Disabilities not included under §§ 4.176, 4.178, 4.180, or 4.182.* * * *

(a) Disabilities incurred or aggravated as the result of training, hospitalization, or medical or surgical treatment under section 31, Public Law 141, 73d Congress, the result of examinations under section 12, Public Law 866, 76th Congress, or the result of training under paragraph 4, Part VII, Veterans Regulation 1 (a), as amended (38 U. S. C. ch. 12A) (Public Law 16, 78th Cong., as amended), or Public Law 894, 81st Congress.

(Sec. 5, 43 Stat. 608, as amended, sec. 2, 46 Stat. 1016, sec. 7, 48 Stat. 9; 38 U. S. C. 11a, 426, 707)

This regulation is effective December 31, 1957.

[SEAL] J. C. PALMER,
Assistant Deputy Administrator.

[F. R. Doc. 57-10754; Filed, Dec. 30, 1957; 8:45 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter XVIII—National Shipping Authority, Maritime Administration, Department of Commerce

RATES ON COAL, GRAIN OR IRON ORE IN BULK

DELETION OF "NSA" ORDERS, APPEARING IN THIS CHAPTER UNDER DESIGNATION "DRO"

The following orders, having become obsolete, are hereby deleted:

DRO-2—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Norway. [NSA Order No. 7]

DRO-3—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Denmark. [NSA Order No. 8]

DRO-4—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Germany (excluding Baltic ports). [NSA Order No. 9]

DRO-5—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and the Netherlands. [NSA Order No. 10]

DRO-6—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Belgium. [NSA Order No. 11]

DRO-8—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Portugal. [NSA Order No. 13]

DRO-9—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and French North Africa. [NSA Order No. 14]

DRO-11—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Greece. [NSA Order No. 16]

DRO-12—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and the west coast of Africa (including the Canary, Medeira and Cape Verde Islands). [NSA Order No. 17]

DRO-13—Rates on grain in bulk between United States ports and Norway. [NSA Order No. 18]

DRO-14—Rates on grain in bulk between United States ports and Denmark. [NSA Order No. 19]

DRO-15—Rates on grain in bulk between United States ports and Germany (excluding Baltic ports). [NSA Order No. 20]

DRO-16—Rates on grain in bulk between United States ports and the Netherlands. [NSA Order No. 21]

DRO-17—Rates on grain in bulk between United States ports and Belgium. [NSA Order No. 22]

DRO-18—Rates on grain in bulk between United States ports and France. [NSA Order No. 23]

DRO-21—Rates on grain in bulk between United States ports and Portugal. [NSA Order No. 26]

DRO-22—Rates on grain in bulk between United States ports and French North Africa. [NSA Order No. 27]

DRO-23—Rates on grain in bulk between United States ports and Italy (including ports on the Adriatic Sea). [NSA Order No. 28]

DRO-24—Rates on grain in bulk between United States ports and Greece. [NSA Order No. 29]

DRO-25—Rates on grain in bulk between United States ports and Turkey. [NSA Order No. 30]

DRO-26—Freight payment clause. [NSA Order No. 31]

DRO-27—Rate on iron ore in bulk from Narvik to Baltimore or Philadelphia. [NSA Order No. 36]

DRO-28—Rate on iron ore in bulk from Monrovia, Liberia, to Baltimore or Philadelphia. [NSA Order No. 37]

DRO-29—Rates on coal in bulk from Hampton Roads, Baltimore or Philadelphia to Kiel, Germany. [NSA Order No. 38]

DRO-32—Rates on coal in bulk between Hampton Roads, Baltimore or Philadelphia and Italy (including ports on the Adriatic Sea). [NSA Order No. 42]

DRO-33—Rates on coal in bulk from the port of Charleston, South Carolina. [NSA Order No. 44]

DRO-34—Rates on grain in bulk from United States ports to India. [NSA Order No. 45]

DRO-35—Rates on coal in bulk from Hampton Roads, Baltimore, Philadelphia, Charleston or Mobile to Sweden. [NSA Order No. 52]

DRO-36—Rates on coal in bulk from Hampton Roads, Baltimore, Philadelphia, Charleston or Mobile to the United Kingdom. [NSA Order No. 53]

DRO-37—Rates on coal in bulk from Hampton Roads, Baltimore, Philadelphia, Charleston or Mobile to Eire or Northern Ireland. [NSA Order No. 54]

DRO-38—Rates on coal in bulk between Hampton Roads, Baltimore, Philadelphia, Charleston, South Carolina or Mobile, Alabama, and France. [NSA Order No. 57]

DRO-39—Rates on grain in bulk from United States ports to Eire. [NSA Order No. 60]

DRO-40—Rates on grain in bulk from United States ports to the United Kingdom and Northern Ireland. [NSA Order No. 61]

(Sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114)

Dated: December 24, 1957.

WALTER C. FORD,
Deputy Maritime Administrator.

[F. R. Doc. 57-10825; Filed, Dec. 30, 1957; 8:48 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter A—Armed Services Procurement Regulations

[Amdt. 23]

MISCELLANEOUS AMENDMENTS

This entire revision is editorial and technical in nature. Its purpose is to make this subchapter consistent with the new Title 10, United States Code (Armed Forces), as enacted by Public Law 1028, 84th Congress. So far as procurement is concerned, chapter 137 of the new Title 10, supersedes the Armed Services Procurement Act of 1947, as amended. When this subchapter now refers to the "Armed Services Procurement Act," the reference is to chapter 137, Title 10, U. S. Code. In enacting the new title, Congress stated that it was not intended to change the substance of old statutes; nevertheless several have been repealed and there have been significant language changes in others, which have made necessary this extensive revision.

Most of the changes made in this revision involve substitution of current citations of laws for obsolete citations.

A large number of changes result from the adoption of new statutory definitions, and have been made with the purpose of simplifying transition from statute to regulation. Among these definitions are: *"Department of Defense"* (§ 1.201–10); *"shall"* (§ 1.201–11); *"may"* (§ 1.201–12); *"includes"* (§ 1.201–13); *"United States"* (§ 1.201–14); *"Territory"* (§ 1.201–15); *"possessions"* (§ 1.201–16); *"Armed Services Procurement Act"* (§ 1.201–17); *"negotiate* and *negotiation"* (§ 1.201–18); and, *"supplies"* (§ 1.201–8). These definitions should be studied carefully and borne in mind constantly when referring to this subchapter, since in all but a few instances they are applicable throughout the subchapter.

In particular, it should be noted that *"United States,"* when used in a geographical sense (except in Subpart A of Part 6) means the 48 States and the District of Columbia, and does not in any instance include Alaska or Hawaii. When a statute defines *"United States"* otherwise, this subchapter has been adjusted so as to use, basically, the definition set forth in Title 10, U. S. Code. For the time being, Subpart A of Part 6, dealing with the Buy-American Act, employs the definition of that Act; it is expected that this will be remedied in an early revision which will revise substantially the entire part.

The changes also involve the following contract clauses: *"Note—Payment by Barter"* (§ 1.310.2 (b)); *"Vinson-Trammell Act"* (retitled *"Excess Profit"*) (§ 7.104–11); and *"Domestic Food, Clothing, Cotton, Spun Silk Yarn for Cartridge Cloth, or Wool"* (§ 7.104–13). While none of these changes is substantive, it is nevertheless essential that appropriate alterations be made on any form on which these clauses appear.

Particular attention is invited to Subpart B of Part 3, changes in language of which will in some instances affect the drafting of determinations and findings in connection with the negotiation of contracts.

To a great extent the changes contained in this revision have already been placed in effect by general departmental directives, pursuant to informal directives from the Office of the Assistant Secretary of Defense (Supply and Logistics). Consequently, this revision shall be effective at all applicable echelons upon receipt.

PART 1—GENERAL PROVISIONS

SUBPART A—INTRODUCTION

Section 1.101 has been revised to read as follows:

§ 1.101 *Purpose of subchapter.* This subchapter, issued by the Assistant Secretary of Defense (Supply and Logistics) by direction of the Secretary of Defense, and in coordination with the Secretaries of the Army, Navy, and Air Force, establishes for the Department of Defense, uniform policies and procedures, relating to the procurement of supplies and services under the authority of chapter 137, Title 10 of the United States Code, or under other statutory authority.

SUBPART B—DEFINITIONS OF TERMS

Sections 1.201 to 1.201–18 have been revised to read as follows:

Sec.

AUTHORITY: §§ 1.201 to 1.201–18 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1.201 *Definitions.* As used throughout this subchapter, the following terms shall have the meanings set forth below:

§ 1.201–1 *Department and Military Department.* "Department and Military Department" include the Department of the Army, the Department of the Navy, and the Department of the Air Force.

§ 1.201–2 *Secretary.* "Secretary" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military department.

§ 1.201–3 *Procuring activity.* "Procuring activity" includes, for the Army, the technical services, the continental armies, the National Guard Bureau, the Military District of Washington, and the major oversea commands; for the Navy, each Bureau of the Navy Department, the Office of Naval Research, the Aviation Supply Office, the Military Sea Transportation Service and the United States Marine Corps; for the Air Force, the Air Matériel Command. It also includes the Military Medical Supply Agency, the Military Petroleum Supply Agency, and any other procuring activity hereafter established. The number and designation of particular procuring activities of any military department may be changed by directive of the Secretary.

§ 1.201–4 *Head of a procuring activity.* "Head of a procuring activity" includes, for the Army, the chiefs of the technical services, the Zone of Interior Army commanders, the Chief of the National Guard Bureau, the Commanding General of the Military District of Washington, U. S. Army and the commanding generals of the major oversea commands; for the Navy, the Chief of each Bureau, the Chief of Naval Research, the Aviation Supply Officer, the Commander, Military Sea Transportation Service, and the Commandant of the United States Marine Corps; for the Air Force, the Commanding General of the Air Matériel Command. It also includes the Executive Director of the Military Medical Supply Agency, the Executive Director of the Military Petroleum Supply Agency, and the head of any other procuring activity hereafter established. The number and designation of Heads of Procuring Activities within any military department may be changed by directive of the Secretary.

§ 1.201–5 *Contracting officer.* "Contracting officer" means any officer or civilian employee of any military department who, in accordance with departmental procedures, has been or shall be designated a contracting officer (and whose designation has not been terminated or revoked) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or any part of such authority, as hereinafter provided.

§ 1.201–6 *Contracts.* "Contracts" means all types of agreements and orders for the procurement of supplies or services. It includes awards and preliminary notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders or task letters thereunder; letter contracts, letters of intent, and purchase orders. It also includes amendments, modifications, and supplemental agreements with respect to any of the foregoing.

§ 1.201–7 *Procurement.* "Procurement" includes purchasing, renting, leasing, or otherwise obtaining supplies or services.

§ 1.201–8 *Supplies.* "Supplies" means all property except land or interests in land. It includes public works, buildings, facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this subchapter is

synonymous with "property" as described in 10 U. S. C. 2303 (b).

§ 1.201–9 *Sources of supplies*—(a) "Sources of supplies" shall include only (i) manufacturers, (ii) construction contractors, and (iii) regular dealers in the supplies to be procured. A "regular dealer" shall be deemed to be any one of the following:

(1) A person or firm who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business;

(2) In the case of supplies of particular kinds (lumber and timber products, coal, machine tools, raw cotton, petroleum, green coffee, or hay, grain, feed, and straw), a person or firm satisfying the requirements of Article 101 (b) of the Regulations of the Secretary of Labor (41 CFR 201.101) under the Walsh-Healy Public Contracts Act (41 U. S. C. 35), as amended from time to time.

The above definitions shall not apply to contracts for supplies no part of which will be manufactured or furnished within the United States, its Territories, Puerto Rico, or the Virgin Islands.

(b) A manufacturer, construction contractor, or regular dealer may bid, negotiate, and contract through an authorized agent: *Provided*, That the agency is disclosed, and the agent acts and contracts in the name of his principal. In this connection, see the clause entitled "Covenant Against Contingent Fees" set forth in § 7.103–20 and the procedures prescribed for obtaining information concerning contingent or other fees, as set forth in Subpart E of Part 1.

§ 1.201–10 *Department of Defense.* "Department of Defense" comprises the Office of the Secretary of Defense and the military departments.

§ 1.201–11 *Shall.* "Shall" is used in an imperative sense.

§ 1.201–12 *May.* "May" is used in a permissive sense. The words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

§ 1.201–13 *Includes.* "Includes" means "includes but is not limited to."

§ 1.201–14 *United States.* "United States," when used in a geographic sense, means the States and the District of Columbia.

§ 1.201–15 *Territory.* "Territory" means Alaska and Hawaii.

§ 1.201–16 *Possessions.* "Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Wake Island, Midway Island, and the guano islands, but does not include any Territory or the Commonwealth of Puerto Rico.

§ 1.201–17 *Armed Services Procurement Act.* "Armed Services Procurement Act" means chapter 137, Title 10, United States Code, a codification of the Armed Services Procurement Act of 1947, as amended.

§ 1.201–18 *Negotiate and negotiation.* "Negotiate and negotiation," when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

SUBPART C—BASIC POLICIES

1. Section 1.306–2 has been revised to read as follows:

§ 1.306 *Transportation costs.*

* * * * *

§ 1.306–2 *Place of delivery*—(a) *Shipments originating within the United States for ultimate delivery within the United States.* Unless there are valid reasons to the contrary, the procurement of supplies from sources and for delivery within the United States shall be in accordance with the following policy:

(1) When it is estimated that a contract will require no shipment to a single destination which will equal a minimum carload or truckload lot, delivery shall be made on the basis of all transportation charges paid to destination.

(2) When it is estimated that a contract will require a shipment of a minimum carload or truckload lot, delivery shall be either on the basis of:

(i) At the Government's option, f. o. b. carrier's equipment, wharf, or freight station at a specified city or shipping point at or near contractor's plant; or

(ii) All transportation charges paid to destination, whichever is the more advantageous to the Government. In formally advertised procurements the Invitation for Bids shall provide that bidders may bid on either or both of the above bases, and bids shall be evaluated on the basis of overall cost to the Government.

In the absence of specific information to the contrary, a minimum carload or truckload lot shall be deemed to be approximately 20,000 pounds.

(b) *Shipments originating within the United States for ultimate delivery outside the United States.* Unless there are valid reasons to the contrary, purchases of supplies within the United States for ultimate delivery to destinations outside of the United States, regardless of the quantity of the shipment, shall be made on the basis of delivery at the Government's option, f. o. b. carrier's equipment, wharf, or freight station at a specified city or shipping point at or near contractor's plant. This policy applies to supplies shipped directly to a port area for export or to storage areas for subsequent reshipment to a port area for export.

(c) *Shipments originating outside the United States.* Selection of place of delivery for shipments originating outside the United States shall be in accordance with procedures prescribed by each respective military department.

2. Paragraph (b) of § 1.309 has been revised to read as follows:

§ 1.309 *Preference for United States-flag privately owned ocean carriers.* * * *

(b) *General.* It is the policy of the Department of Defense, in furtherance of the Cargo Preference Act (68 Stat. 832; 46 U. S. C. A. 1241 (b)) and 10 U. S. C. 2631 to encourage and foster the American merchant marine. When transportation of supplies by ocean vessel is required:

* * * * *

3. Section 1.310–2 (b) has been revised by the addition of the words "its Territories, its possessions, and Puerto Rico", following the words "United States" in the first paragraph of the clause, as follows:

§ 1.310–2 *Procurement effected within the United States.* * * *

(b) Such Invitations for Bids or Requests for Proposals shall contain appropriate space for indicating alternate prices, one clearly labelled for barter prices and the other clearly labelled for non-barter prices. In addition, such Invitations for Bids and Requests for Proposals shall include the following clause:

NOTE—PAYMENT BY BARTER

Attention is directed to Section 303 of the Agricultural Trade Development and Assistance Act of 1954 (P. L. 480, 83d Cong.) which authorizes the disposal by barter or exchange of surplus agricultural commodities for use outside of the United States, its Territories, its possessions, and Puerto Rico. Bidders or offerors interested in a barter arrangement (accepting payment in agricultural commodities for use outside of the United States, its Territories, its possessions, and Puerto Rico rather than in dollars) should consult, and make appropriate arrangements with, the Commodity Credit Corporation, Barter and Stockpiling Division, United States Department of Agriculture, Washington 25, D. C. prior to submitting a bid.

Simultaneously with the issuance of this Invitation for Bids or Request for Proposals, a copy thereof is being furnished to the Commodity Credit Corporation.

Bids or proposals may be made on a barter basis, or on a non-barter basis, or on both bases in the alternative. Bids or proposals on either basis shall be stated in terms of dollars, not in terms of the desired commodity. Arrangements for converting dollar receipts under the contract into commodities must be made by separate agreement with the Commodity Credit Corporation.

Any bid or proposal based on a barter arrangement must be submitted directly to the purchasing office issuing this Invitation for Bids or Request for Proposals. In addition, a copy of the official bid or proposal must be forwarded to the Commodity Credit Corporation, by the time specified for submitting bids or proposals, in a sealed envelope marked with the Invitation for Bids or Request for Proposals number, and the date and time of opening by the purchasing office.

The Commodity Credit Corporation will consider the barter aspects of all such bids or proposals and will then advise the purchasing office issuing this Invitation for Bids or Request for Proposals which bids or proposals, if any, based on a barter arrangement are acceptable to the Commodity Credit Corporation. Any such bids or proposals which are acceptable to the Commodity Credit Corporation will be considered and evaluated by the purchasing office in connection with the evaluation of the non-barter bids or proposals received hereunder. If the lowest acceptable barter type bid of proposal is equal to or less than the price of the lowest

responsive non-barter bid or proposal, preference will be given to the barter type bid or proposal.

No award will be made on a barter basis unless the bidder or offeror has entered into a suitable agreement with the Commodity Credit Corporation and the Commodity Credit Corporation has informed the purchasing office that the barter bid or proposal is acceptable. If the award is made on the basis of a barter type bid or proposal, the bidder or offeror, pursuant to the clause of the contract entitled Assignment of Claims and notwithstanding any language to the contrary contained therein, hereby irrevocably assigns all the moneys due or to become due under the resultant contract to the Commodity Credit Corporation. The bidder or offeror will be entitled to acquire commodities on the basis of its agreement with the Commodity Credit Corporation.

4. In § 1.310–3, the word "continental" has been deleted from the caption of this paragraph, as follows:

§ 1.310–3 *Procurement effected outside the United States.* • • •

SUBPART F—DEBARRED, INELIGIBLE, AND SUSPENDED BIDDERS

Section 1.608 has been revised to read as follows:

§ 1.608 *Sample of list.*

[Insert Classification]

CONSOLIDATED RESTRICTED LISTING OF FIRMS AND INDIVIDUALS DEBARRED OR INELIGIBLE

• • • • • • •

Contractor, firm, or individual	*Termination date*	*Type*	*Basis of action*
Able Baker Charlie Co., New Orleans, La..	Nov. 21, 1954	B	Sec. 1 (a), Walsh-Healey Act—Ineligible as manufacturer in all commodities.
Charlie, A. B.		.....	See Able B. Charlie Co.
Doe Furniture Co., Cleveland, Ohio.....	Oct. 28, 1953	A	Sec. 3, Walsh-Healey Act.
Fox Construction Co., Detroit, Mich.....	Mar. 7, 1954	A	Sec. 3, Davis-Bacon Act.
Roe Engineering Service, Chicago, Ill.....	Feb. 17, 1954	C	Sec. 3 (b) Buy American Act (Dept. of the Army).
Show Furniture Co., Newark, N. J.....	Apr. 12, 1953	A	Conviction for fraud (Gen. Services Admin.).
Tare Steel Co.	Indefinite	D	Suspended.

(Type A listings shall not be awarded contracts and shall not be solicited by bid or proposal.)

(Type B listings shall not be awarded contracts in any amount and shall not be solicited by bid or proposal for materials, supplies, articles, or equipment in which declared ineligible. However, contracts may be awarded and bids or proposals may be solicited for commodities in which not declared ineligible regardless of amount.)

(Type C listings shall not be awarded contracts and shall not be solicited by bid or proposal for construction, alteration, or repair of public buildings or public work in the United States or elsewhere as specified in the Buy American Act. However, listings may be awarded contracts and may be solicited by bid or proposal for other than construction, alteration, or repair of public buildings or public work as specified in the Buy American Act.)

(Type D listings shall not be solicited by bid or proposal; if bids or proposals are received, they will not be considered or evaluated nor will awards of contracts be made to such listings unless it is determined by the Secretary of a Department or his authorized representative to be in the best interest of the Government.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 2—PROCUREMENT OF FORMAL ADVERTISING

Section 2.206–1 has been revised by deletion of the word "continental", which preceded the words "United States", in the first sentence. It now reads as follows:

§ 2.206 *Synopses of proposed procurements.*

§ 2.206–1 *Statement of policy.* All proposed unclassified procurements made in the United States, which may result in an award in excess of $10,000, will be publicized promptly in the Department of Commerce publication "Synopsis of U. S. Government Proposed Procurement, Sales and Contract Awards," except the following:

• • • • •

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

§ 2.406–5 *Statement and certificate of award.* In connection with every purchase made by formal advertising, the contracting officer shall prepare and execute as statement and certificate of award on U. S. Standard Form 1036, in accordance with § 16.801 of this subchapter. Such certificate shall either (i) state that the accepted bid was the lowest bid received, or (ii) list all lower bids and set forth reasons for accepting a bid other than the lowest. In this connection it is unnecessary to evaluate non-responsive bids which upon complete evaluation might be low. In each case where an award is made pursuant to (1), (2), (3), or (4) of § 2.406–4 (a), such certificate shall briefly recite the circumstances under which award was made and shall contain a statement that it has been administratively determined that the award will further the Congressional policy with respect to small business expressed in 10 U. S. C. 2301 or will further the policy with respect to labor surplus areas, or both, as the case may be.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 3—PROCUREMENT BY NEGOTIATION

Section 3.000 has been revised to read as follows:

§ 3.000 *Scope of part.* This part sets forth, on the basis of the provisions of and authority contained in the Armed Services Procurement Act, (a) the basic requirements for the procurement of supplies and services by means of negotiation, (b) the different circumstances under which negotiation is permitted, (c) determinations and findings that may be required before a contract is entered into by negotiation, (d) approved types of negotiated contracts and their use, (e) the authority for making advance payments under negotiated contracts, (f) procedures for effecting purchases of not more than $1,000, (g) procedures for negotiating overhead rates, and (h) price negotiation policies and techniques.

SUBPART A—USE OF NEGOTIATIONS

1. Section 3.101 has been revised to read as follows:

§ 3.101 *Negotiation as distinguished from formal advertising.* Whenever supplies or services are to be procured by negotiation, price quotations (Part 16, Subpart B), supported by statements and analyses of estimated costs or other evidence of reasonable prices and other vital matters deemed necessary by the contracting officer, shall be solicited from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services, in accordance with the basic policies set forth in Subpart C of Part 1, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Negotiation shall thereupon be conducted, by contracting officers and their negotiators, with due attention being given to the following and any other appropriate factors:

(a) Comparison of prices quoted, and consideration of other prices for the same or similar supplies or services, with due regard to production costs, including extra-pay shift, multishift and overtime costs, and any other factor relating to price, such as profits, cost of transportation, and cash discounts;

(b) Comparison of the business reputations, capabilities, and responsibilities of the respective persons or firms who submit quotations (see § 1.307 of this subchapter);

(c) Consideration of the quality of the supplies or services offered, or of the same or similar supplies or services previously furnished, with due regard to the satisfaction of technical requirements;

(d) Consideration of delivery requirements (see § 1.306);

(e) Discriminating use of price and cost analyses (see § 16.206 of this subchapter);

(f) Investigation of price aspects of any important subcontract;

(g) Individual bargaining, by mail or by conference;

(h) Consideration of cost sharing;

(i) Effective utilization in general of the most desirable type of contract, and in particular of contract provisions relating to price redetermination (see Subpart D of this part);

(j) Consideration of the size of the business concern (see §§ 1.302–3 of this subchapter and 3.104);

(k) Consideration as to whether the prospective supplier is a planned producer under the industrial mobilization program;

(l) Consideration to to whether the prospective supplier requires expansion or conversion of plant facilities;

(m) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area (see § 3.105);

(n) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor;

(o) Consideration of the extent of subcontracting;

(p) Consideration of the existing and potential workload of the prospective supplier;

(q) Consideration of broadening the industrial base by the development of additional suppliers;

(r) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities; or Government-operated test facilities; and

(s) Consideration of contract performance in facilities located in dispersed sites.

2. Section 3.108 (e) has been revised as follows:

§ 3.108 *Negotiation of initial production contracts for technical or specialized military supplies.* * * *

(e) Contracts negotiated pursuant to (b) above shall normally cite 10 U. S. C. 2304 (a) (14) (see § 3.214) or, where more appropriate, 10 U. S. C. 2304 (a) (16) (see § 3.216).

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATION

This Subpart B has been revised in its entirety, as follows:

Sec.
3.200 Scope of subpart.
3.201 National emergency.
3.201–1 Authority.
3.201–2 Application.
3.202 Public exigency.
3.202–1 Authorization.
3.202–2 Application.
3.202–3 Limitation.
3.203 Purchases not more than $1,000.
3.203–1 Authority.
3.203–2 Application.
3.204 Personal or professional services.
3.204–1 Authority.
3.204–2 Application.
3.205 Services of educational institutions.
3.205–1 Authority.
3.205–2 Application.
3.206 Purchases outside the United States.
3.206–1 Authority.
3.206–2 Application.
3.207 Medicines or medical supplies.
3.207–1 Authority.
3.207–2 Application.
3.208 Supplies purchased for authorized resale.
3.208–1 Authority.
3.208–2 Application.
3.209 Perishable subsistence supplies.
3.209–1 Authority.
3.209–2 Application.
3.210 Supplies or services for which it is impracticable to secure competition by formal advertising.
3.210–1 Authority.
3.210–2 Application.
3.210–3 Limitation.
3.211 Experimental, developmental, or research work.
3.211–1 Authority.
3.211–2 Application.
3.211–3 Limitation.
3.211–4 Records and reports.
3.212 Classified purchases.
3.212–1 Authority.
3.212–2 Application.
3.212–3 Limitation.
3.213 Technical equipment requiring standardization and interchangeability of parts.
3.213–1 Authority.
3.213–2 Application.
3.213–3 Limitation.
3.213–4 Records and reports.
3.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.
3.214–1 Authority.
3.214–2 Application.
3.214–3 Limitation.
3.215 Negotiation after advertising.
3.215–1 Authority.
3.215–2 Limitation.
3.216 Purchases in the interest of national defense or industrial mobilization.
3.216–1 Authority.
3.216–2 Application.
3.216–3 Limitation.
3.216–4 Records and reports.
3.217 Otherwise authorized by law.
3.217–1 Authority.
3.217–2 Application.
3.218 Construction work.
3.218–1 Application.
3.218–2 Limitation on authority to negotiate contracts.
3.218–3 Citation of authority to negotiate.
3.219 Negotiation of set-asides for labor surplus areas.
3.219–1 General.
3.219–2 Limitation.
3.219–3 Eligible bidders and offerors.
3.219–4 Method of negotiation.
3.219–5 Limitations on contract price.

AUTHORITY: §§ 3.200 to 3.219–5 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 3.200 *Scope of subpart.* Subject to the limitations prescribed in Subpart A of this part, and pursuant to the authority of 10 U. S. C. 2304 (a), procurement may be effected by negotiation under any one of the exceptions ((1) through (17) of 10 U. S. C. 2304 (a)) set forth in this subpart.

§ 3.201 *National emergency.*

§ 3.201–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (1), purchases and contracts may be negotiated if—

it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President.

§ 3.201–2 *Application.* (a) This authority shall be used only to the extent determined by the Assistant Secretary of Defense (Supply and Logistics) to be necessary in the public interest, and then only in accordance with departmental procedures consistent with this § 3.201.

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Assistant Secretary of Defense (Supply and Logistics) has determined that the following procurements only shall be made pursuant to the authority of 10 U. S. C. 2304 (a) (1):

(1) Procurements made pursuant to labor surplus and disaster area programs; set asides shall be negotiated in accordance with procedures set forth in § 3.219;

(2) Procurements made in keeping with the small business programs;

(3) Nonperishable subsistence (pending resolution of the recommendation on this subject contained in the report of the Commission on Organization of the Executive Branch of the Government, subject: "Food and Clothing");

(4) Procurements which are authorized to be negotiated under the provisions of § 3.211–1 for not more than $100,000 from contractors other than educational institutions; such negotiated procurements from educational institutions shall be negotiated under the authority of 10 U. S. C. 2304 (a) (5), (see § 3.205) irrespective of amount; and

(5) Procurements for more than $1,000, but not more than $2,500.

(c) Except as authorized in (b) above, procurements may be negotiated only when authorized by 10 U. S. C. 2304 (a) (2) through 10 U. S. C. 2304 (a) (17) (§§ 3.202 through 3.217), 10 U. S. C. 2304 (c) (§ 3.218), and § 3.219; determinations and findings shall be made in accordance with 10 U. S. C. 2310 and 10 U. S. C. 2311 (Subpart C of this part); and the appropriate authority shall be cited in each contract.

§ 3.202 *Public exigency.*

§ 3.202–1 *Authorization.* Pursuant to the authority of 10 U. S. C. 2304 (a) (2), purchases and contracts may be negotiated if—

the public exigency will not permit the delay incident to advertising.

§ 3.202–2 *Application.* In order for this authority to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. The following are illustrative of circumstances with respect to which this authority may be used:

(a) Supplies or services needed at once because of a fire, flood, explosion, or other disaster;

(b) Essential equipment for or repair to a ship when such equipment or repair is needed at once for compliance with the orders of the ship;

(c) Essential equipment for or repair to aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft.

§ 3.202–3 *Limitation.* Every contract negotiated under the authority of this § 3.202 shall be accompanied by a signed statement of the contracting officer justifying its use, and a copy of such statement shall be sent to the General Accounting Office with a copy of the contract negotiated and executed hereunder.

§ 3.203 *Purchases not more than $1,000.*

§ 3.203–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (3), purchases and contracts may be negotiated if—

the aggregate amount involved is not more than $1,000.

§ 3.203–2 *Application.* Purchases or contracts aggregating not more than

$1,000 shall be made in accordance with Subpart F of this part.

§ 3.204 *Personal or professional services.*

§ 3.204–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (4), purchases and contracts may be negotiated if—

for personal or professional services.

§ 3.204–2 *Application.* (a) This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed either by an individual contractor in person or a firm or organization;

(2) The services (i) are of a professional nature, or (ii) are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law, and is effected in accordance with the requirements of any such law and in accordance with departmental procedures.

This authority, and the above conditions imposed upon its use, shall not apply to the procurement by negotiation of any type of services authorized under any other provision of this part.

§ 3.205 *Services of educational institutions.*

§ 3.205–1 *Authority.* Pursuant to the authority of 10 U. S. C. 2304 (a) (5), purchases and contracts may be negotiated if—

for any service to be rendered by any university, college, or other educational institution.

§ 3.205–2 *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(a) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(b) Experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith;

(c) Analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

§ 3.206 *Purchases outside the United States.*

§ 3.206–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (6), purchases and contracts may be negotiated if—

for property or services to be procured and used outside the United States, its Territories, and its possessions.

§ 3.206–2 *Application.* This authority shall be used only for the procurement of—

(a) Supplies to be (1) shipped from, (2) delivered, and (3) used, or

(b) Services to be performed

outside of the United States, its Territories, and its possessions, irrespective of the place of negotiation or execution of the contract.

§ 3.207 *Medicines or medical supplies.*

§ 3.207–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (7), purchases and contracts may be negotiated if—

for medicine or medical supplies.

§ 3.207–2 *Application.* This authority shall be used only when the following two requirements have been satisfied:

(a) Such supplies are peculiar to the field of medicine, including technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment; and

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of, or contract for, supplies or services, under the authority of this paragraph, for more than $10,000.

§ 3.208 *Supplies purchased for authorized resale.*

§ 3.208–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (8), purchases and contracts may be negotiated if—

for property for authorized resale.

§ 3.208–2 *Application.* (a) This authority shall be used only for purchases for resale, where appropriated funds are involved, and ordinarily only for purchases of articles with brand names or of a proprietary nature which a selling activity believes or finds to be desired or preferred by its patrons.

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services, under the authority of this paragraph, for more than $10,000.

§ 3.209 *Perishable subsistence supplies.*

§ 3.209–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (9), purchases and contracts may be negotiated if—

for perishable subsistence supplies.

§ 3.209–2 *Application.* This authority may be used for the purchase of any and all kinds of perishable subsistence supplies.

§ 3.210 *Supplies or services for which it is impracticable to secure competition by formal advertising.*

§ 3.210–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (10), purchases and contracts may be negotiated if—

for property or services for which it is impracticable to obtain competition.

§ 3.210–2 *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(a) When supplies or services can be obtained from only one person or firm ("sole source of supply");

(b) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances;

(c) When bids have been solicited pursuant to the requirements of Section II, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation of bids) has been received from a responsible bidder;

(d) When bids have been solicited pursuant to the requirements of Part 2 of this subchapter, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(e) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services;

(f) When the contemplated procurement is for training film, motion picture productions, or manuscripts;

(g) When the contemplated procurement is for technical, non-personal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature;

(h) When the contemplated procurement is for studies or surveys other than those which may be negotiated under §§ 3.205 or 3.211;

(i) When the contemplated procurement involves maintenance, repair, alterations or inspection, in connection with any one of which types of services the exact nature or amount of the work to be done is not known;

(j) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal solicitation of bids;

(k) When the contemplated procurement is for commercial ocean or air transportation, including time charters, space charters and voyage charters over trade routes not covered by common carriers (as to which, negotiation is authorized under the provisions of § 3.217 and Section 321 of the Interstate Commerce Act of September 18, 1940, 49 U. S. C. 65), and including services for the operation of Government-owned vessels or aircraft;

(l) When the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling, and transportation, whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(m) When it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services.

(n) When, under the procedures set forth in joint regulation DOD 4145.16–R, AR 743–455, NAVSANDA PUB 297, AFR 67–61, and NAVMC 1133, the contract is for storage (and related services) of household goods.

§ 3.210–3 *Limitation.* The authority of this § 3.210 shall not be used when negotiation is authorized by the provisions of §§ 3.211, 3.213, 3.214, 3.215 or 3.216. Every contract that is negotiated under the authority of this § 3.210 shall be accomplished by a signed statement of the contracting officer justifying its use, and a copy of such statement shall be sent to the General Accounting Office with a copy of the contract negotiated and executed hereunder.

§ 3.211 *Experimental, developmental, or research work.*

§ 3.211–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (11), purchases and contracts may be negotiated if—

for property or services that he [the Secretary] determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research.

§ 3.211–2 *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(a) Contracts relating to theoretical analysis, exploratory studies, and experiment in any field of science or technology;

(b) Developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(c) Contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research, or test;

(d) Contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

This authority shall not be used for negotiated contracts with educational institutions or for quantity production, except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experiment, development, research or test; accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production. Negotiated contracts with educational institutions shall be negotiated under the authority of 10 U. S. C. 2304 (a) (5) (see § 3.205) irrespective of amount. During the current national emergency negotiation of such contracts for not more than $100,000 shall be conducted under the authority of 10 U. S. C. 2304 (a) (1) (see § 3.201–2 (b) (4)).

§ 3.211–3 *Limitation.* In order for this authority to be used, the required determination must be made in accordance with the requirements of Subpart C of this part.

§ 3.211–4 *Records and reports.* Each military department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this paragraph, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in §§ 1.110 and 16.807 of this subchapter.

§ 3.212 *Classified purchases.*

§ 3.212–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (12), purchases and contracts may be negotiated if—

for property or services whose procurement he [the Secretary] determines should not be publicly disclosed because of their character, ingredients, or components.

§ 3.212–2 *Application.* This authority may be used for purchases or contracts classified "Confidential" or higher, or where because of other considerations, the contract should not be publicly disclosed.

§ 3.212–3 *Limitation.* In order for this authority to be used, the required determination must be made in accordance with the requirements of Subpart C of this part. The authority of this § 3.212 shall not be used when negotiation is authorized by the provisions of § 3.210.

§ 3.213 *Technical equipment requiring standardization and interchangeability of parts.*

§ 3.213–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (13), purchases and contracts may be negotiated if—

for equipment that he [the Secretary] determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability.

§ 3.213–2 *Application.* (a) This authority may be used for procuring additional units and replacement items of specified makes and models of technical equipment and parts, which are for tactical use or for use outside the continental United States, in theaters of operations, on board naval vessels, or at advanced or detached bases; and which have been adopted as standard items of supply in accordance with procedures prescribed by each respective Department. A current or recurring procurement requirement for the item shall be present. This authority would apply, for example, whenever it is necessary:

(1) To limit the variety and quantity of parts that must be carried in stock;

(2) To make possible, by standardization, the availability of parts that may be interchanged among items of damaged equipment during combat or other emergency; or

(3) To procure from selected suppliers technical equipment which is available from a number of suppliers but which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(b) Before making a determination to procure specified makes and models under this authority, consideration shall be given to:

(1) The feasibility of economical and timely deployment on a selected geographic basis of makes and models already in supply systems;

(2) The feasibility of timely standardization of components and parts under the Defense Standardization Program;

(3) The effect upon the capability of industry to produce mobilization requirements of all Departments;

(4) The practicability of interchanging parts and cannibalizing equipment;

(5) The probability that future procurement of the selected item of equipment can be effected at reasonable prices;

(6) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock;

(7) The value of similar equipment and its supporting parts on hand;

(8) The contribution of the standardization to combat support;

(9) Possible savings in training personnel and publishing technical literature;

(10) Whether the standardization will adversely affect existing coordinated military specifications and standards; and

(11) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model now in the supply system.

(c) In arriving at determinations to standardize under this authority, the originating Department shall consult with the other Departments in order to assure the full benefit of the standardization.

(d) Actions taken under this authority shall be reviewed by the originating Department at least once every two years to determine whether the standardization should be continued, revised, or cancelled.

§ 3.213–3 *Limitation.* This authority shall not be used for initial procurements of equipment and parts, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless the Secretary of a Department has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The equipment constitutes technical equipment;

(b) Standardization of such equipment and interchangeability of its parts are necessary in the public interest; and

(c) Procurement of such equipment or of its parts by negotiation is necessary to assure that standardization and interchangeability.

§ 3.213–4 *Records and reports.* Each military department shall maintain on a current basis a master list of items for which determinations and findings have been made under this authority.

§ 3.214 *Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture.*

§ 3.214–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (14), purchases and contracts may be negotiated if—

for technical or special property that he [the Secretary] determines to require a substantial initial investment or an extended period of preparation for manufacture and for which he determines that formal advertising and competitive bidding might require duplication of investment or preparation already made, or would unduly delay the procurement of that property.

§ 3.214–2 *Application.* This authority may be used for the procurement of technical or specialized supplies—for example: aircraft, tanks, radar, guided missiles, rockets, and similar items of equipment; major components of any of the foregoing; and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves—

(a) High starting costs which already have been paid for by the Government or by the supplier;

(b) Preliminary engineering and development work that would not be useful to or usable by any other supplier;

(c) Elaborate special tooling already acquired;

(d) Substantial time and effort already expended in developing a prototype or an initial production model; and

(e) Important design changes which will continue to be developed by the supplier.

The authority of this section will in general be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling and equipment.

§ 3.214–3 *Limitation.* This authority shall not be used unless and until the Secretary has determined, in accordance with the requirements of Subpart C of this part, that:

(a) The supplies are of a technical or specialized nature requiring a substantial investment or an extended period of preparation for manufacture; and

(b) Procurement by formal advertising and competitive bidding either—

(1) May require duplication of investment or preparation already made, or

(2) Will unduly delay procurement.

§ 3.215 *Negotiation after advertising.*

§ 3.215–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (15), purchases and contracts may be negotiated if—

for property or services for which he [the Secretary] determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 3.215–2 *Limitation.* This authority shall not be used unless the Secretary has determined, in accordance with the requirements of Subpart C of this part, that the bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Also, after such determination by the Secretary, and after rejection of all bids, no contract shall be negotiated under this authority unless:

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by a contracting officer to each responsible bidder which submitted a bid in response to the invitation for bids;

(b) The negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Secretary; and

(c) The negotiated price is the lowest negotiated price offered by any responsible supplier.

Moreover any evidence of bids not independently reached shall be forwarded to the Department of Justice, as provided in § 2.403 of this subchapter.

§ 3.216 *Purchases in the interest of national defense or industrial mobilization.*

§ 3.216–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (16), purchases and contracts may be negotiated if—

he [the Secretary] determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved.

§ 3.216–2 *Application.* This authority may be used to effectuate such plans and programs as may be evolved under the direction of the Secretary to provide incentives to manufacturers to maintain, and keep active, engineering and design staffs and manufacturing facilities available for mass production. The following are illustrative of circumstances with respect to which this authority may be used:

(a) When procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;

(b) When procurement by negotiation with selected suppliers is necessary in order to train them in the furnishing of critical supplies to prevent the loss of their ability and employee skills, or to maintain active engineering, research, or development work;

(c) When procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization.

§ 3.216–3 *Limitation.* This authority shall not be used unless and until the Secretary has determined, in accordance with the requirements of Subpart C of this part, that:

(a) It is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, and negotiation is necessary to that end;

(b) The interest of industrial mobilization, in case of a national emergency, would be subserved by negotiation with a particular supplier; or

(c) The interest of national defense in maintaining active engineering, research, and development, would be subserved by negotiation with a particular supplier.

§ 3.216–4 *Records and reports.* Each Department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this paragraph, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in §§ 1.110 and 16.807 of this subchapter.

§ 3.217 *Otherwise authorized by law.*

§ 3.217–1 *Authority.* Pursuant to 10 U. S. C. 2304 (a) (17), purchases and contracts may be negotiated if—

otherwise authorized by law.

§ 3.217–2 *Application.* This authority shall be used only if, and to the extent, approved for any military department and in accordance with departmental procedures.

§ 3.218 *Construction work.*

§ 3.218–1 *Application.* Contracts to construct or repair any building, road, sidewalk, sewer, main, or similar item, are subject to 10 U. S. C. 2304 (c) and this § 3.218.

§ 3.218–2 *Limitation on authority to negotiate contracts*—(a) *Work in the United States.* Contracts for construction work to be performed within the United States shall be formally advertised and may not be negotiated unless authorized pursuant to the following subsections of 10 U. S. C. 2304 (a): (1), (2), (3), (10), (11), (12), or (15), (see respectively, §§ 3.201, 3.202, 3.203, 3.210, 3.211, 3.212, and 3.215).

(b) *Work outside of the United States.* Contracts for construction work to be performed outside of the United States shall be formally advertised and may not be negotiated unless authorized pursuant to subsections (1) through (17) of 10 U. S. C. 2304 (a) (§ 3.201 through 3.217), as appropriate (note that such contracts to be performed in the Terri-

tories or possessions of the United States, and Puerto Rico, may not be negotiated pursuant to 10 U. S. C. 2304 (a) (6), (§ 3.206)).

§ 3.218–3 *Citation of authority to negotiate.* Negotiated contracts for construction work shall cite as authority for their negotiation the applicable subsection (1) through (17) of 10 U. S. C. 2304 (a).

§ 3.219 *Negotiation of set-asides for labor surplus areas.*

§ 3.219–1 *General.* When set-asides are used in compliance with § 1.302–4, such set-asides shall be negotiated under the authority of § 3.201–2 (b) (1), in accordance with procedures set forth in this § 3.219.

§ 3.219–2 *Limitation.* Pursuant to section 626 of the Department of Defense Appropriation Act of 1957 (Public Law 639, 84th Congress), and any subsequent similar statutory limitations, no price differentials shall be paid for the purpose of aiding labor surplus areas.

§ 3.219–3 *Eligible bidders and offerors.* Negotiation for set-asides shall be conducted only with such responsible bidders or offerors which have previously submitted bids or proposals on the quantities not set aside conforming to the Invitation for Bids or Request for Proposals, providing such previous bids or proposals offered a unit price within 120 percent of the highest award made on the quantities not set aside; and provided further that contracts for such set-asides will be performed substantially in labor surplus areas.

§ 3.219–4 *Method of negotiation.* (a) Negotiation for set-asides shall be conducted with small business concerns prior to negotiation with other firms in such labor surplus areas. Within each such group, negotiation shall begin with the bidder or offeror which submitted the lowest responsive bid or proposal in connection with the procurement of the quantities not set aside.

(b) If procurement of the entire set-aside cannot be effected by the procedure set forth in (a) above, the unplaced portion of the set-aside may be procured in the most appropriate manner.

(c) In conducting negotiations for the set-aside, it is permissible to reveal the unit price of the lowest award; however, in instances where the non-set-aside portion is procured by means of negotiation, cost or other pricing data pertaining to such award may not be divulged.

§ 3.219–5 *Limitations on contract price.* (a) When the procurement of quantities not set aside has resulted in one contract only, or in multiple awards all at the same price, awards for set-asides shall not exceed the contract price for the quantities not set aside.

(b) When the procurement of the quantities not set aside has resulted in multiple awards at different contract prices, awards for set-asides shall be at a price determined by the Contracting Officer to be fair and reasonable, but in no event higher than the highest price awarded in connection with the quantities not set aside. In the absence of changes in market trends and other factors requiring consideration, the Contracting Officer shall consider the weighted average price of all awards made in connection with the quantities not set aside as being a fair and reasonable price. The weighted average shall be ascertained by adding the total dollar amounts of all awards in connection with the quantities not set aside and dividing the grand total by the total number of units included in all such awards.

(c) In determining whether proposals for the set-aside portion exceed the contract price, in accordance with paragraph (a) above, or the price, as determined in accordance with paragraph (b) above, for the quantity not set aside, the cost of transportation shall be considered (see § 1.306–1 of this subchapter), unless award of the non-set-aside portion was made without regard to transportation costs.

SUBPART D—TYPES OF CONTRACTS

Section 3.404–3 (c), as amended, reads as follows:

§ 3.404 *Fixed-price contract with provision for redetermination of price.* * * *

(c) *Limitations.* 10 U. S. C. 2306 (d) provides that in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the Secretary of the Department concerned at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the Secretary of the Department concerned at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects). The Head of a procuring activity in the Departments of the Army and Navy and the Director of Procurement and Production of a Major Command in the Department of the Air Force or their duly authorized representatives are authorized to approve fixed fees not in excess of (1) ten per centum (10) of the estimated costs, exclusive of fee, of any contract for experimental, developmental, or research work or (2) seven per centum (7) of the estimated cost, exclusive of fee, of any other contract except that in contracts for architectural or engineering services the fixed fee shall not exceed that authorized by the terms of the law as set forth above. In appropriate cases, fees above the prescribed limits in the authorizations granted herein but within the limitations of the law may be authorized by the Secretary of the Department concerned or his designees.

SUBPART E—ADVANCE PAYMENTS

Section 3.502–1, as amended, reads as follows:

§ 3.502 *Authority and approval requirements for advance payments.*

§ 3.502–1 *Under the Armed Services Procurement Act.* Pursuant to 10 U. S. C. 2307 advance payments may be made under negotiated contracts in any amount not exceeding the contract price and upon such terms as the parties shall agree; *provided* that the Government shall not be committed, directly or indirectly, to make any advance payment pursuant to this authority unless the Secretary of the Department concerned approves the contract provision for advance payments, or the terms and conditions thereof, and determines, in accordance with the requirements of Subpart C of this part, that the provision for advance payments, is (i) in the public interest or in the interest of national defense, and (ii) necessary in order to procure the required supplies or services.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 4—COORDINATED PROCUREMENT

Sections 4.000 and 4.002, as revised, read as follows:

§ 4.000 *Scope of part.* This part sets forth the basic policies and requirements relating to coordinated procurement of supplies and services.

§ 4.002 *Procurement agreements.* 10 U. S. C. 2308 provides that military department heads by agreement may make such assignments and delegations of procurement responsibilities from one military department to another or may create such joint or combined procuring activities or agencies as they deem necessary or desirable. Nothing set forth in this subchapter shall preclude the military departments from making agreements under 10 U. S. C. 2308 which do not violate the single procurement policies and procedures set forth in this Section or in applicable Department of Defense Directives, Instructions, and regulations.

SUBPART A—DEFINITION OF TERMS

Section 4.101, as revised, reads as follows:

Sec.
4.101 Definitions.
4.101–1 Coordinated procurement.
4.101–2 Single procurement.
4.101–3 Requiring department.
4.101–4 Procuring department.
4.101–5 Military Interdepartmental Purchase Request (MIPR).

AUTHORITY: §§ 4.101 to 4.101–5 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 4.101 *Definitions.* As used in this subchapter, the following terms have the meanings set forth below.

§ 4.101–1 *Coordinated procurement.* "Coordinated procurement" refers to procurement (a) of supplies and services pursuant to § 4.002 and (b) of supplies under single procurement as defined in § 4.101–2.

§ 4.101–2 *Single procurement.* "Single procurement" refers to procurement of supplies pursuant to assignments of

procurement responsibility made by the Secretary of Defense. The following are approved types of single procurement:

(a) "Single department procurement," whereby one military department procures certain supplies to satisfy the requirements of all the military departments.

(b) "Plant cognizance procurement," whereby one military department procures certain supplies from a particular plant to satisfy the requirements of all the military departments. This type of procurement is limited presently to airframes, aircraft engines, and propellers.

(c) "Joint procurement," whereby a jointly staffed and financed agency within the Department of Defense procures certain supplies to satisfy the requirements of all the military departments.

§ 4.101–3 *Requiring department.* "Requiring department" refers to the military department originating a requisition or purchase request for supplies.

§ 4.101–4 *Procuring department.* "Procuring department" refers to the military department or agency which is assigned the procurement responsibility for the supplies.

§ 4.101–5 *Military Interdepartmental Purchase Request (MIPR).* "Military Interdepartmental Purchase Request (MIPR)" refers to DD Form 448 (Military Interdepartmental Purchase Request) (see § 16.601 of this subchapter) executed by a Requiring Department, as a request for supplies to be procured or furnished by the Procuring Department, or to be manufactured in its own facilities.

SUBPART B—POLICIES AND GENERAL PRINCIPLES

1. Section 4.201 has been revised by the removal of the word "continental" therefrom.

Section 4.201, as revised, reads as follows:

§ 4.201 *Application of procurement assignment.* Single procurement in the form of single department, joint agency, or plant cognizance procurement shall be effected whenever it will result in net advantages to the Department of Defense as a whole, except so far as it can be demonstrated that use of such a procurement method will adversely affect military operations. Single department procurement assignments outside of the United States, regardless of funds utilized, will be determined by the respective Unified Commanders. Implementation of such assignments will be effected within the unified commands under the direction of the Unified Commander.

2. Section 4.206–2 has been revised, as follows:

§ 4.206–2 *Determinations and findings.* (a) When procurement is by negotiation, the Procuring Department, except as provided in paragraphs (b) and (c) of this section, shall make the Determinations and Findings in accordance with Part 3, Subpart C, of this subchapter, with respect to coordinated procurement. The Requiring Department shall furnish with the procurement request the information required by the Procuring Department to develop the Determinations and Findings.

(b) With respect to 10 U. S. C. 2304 (a) (13), the Requiring Department shall make the Determinations and Findings in accordance with Part 3, Subpart 3, of this subchapter. Two copies of the Determinations and Findings shall be attached to the procurement request and shall be utilized by the Procuring Department as authority for negotiation, and the Procuring Department need not make further Determinations and Findings.

(c) With respect to 10 U. S. C. 2304 (a) (16) and when the procurement agreements under § 4.002 (as distinguished from single procurement) do not include mobilization planning responsibility, the Requiring Department shall make the Determinations and Findings in accordance with Part 3, Subpart C, of this subchapter. Two copies of the Determinations and Findings shall be attached to the procurement request and shall be utilized by the Procuring Department as authority for negotiation, and the Procuring Department need not make further Determinations and Findings. With respect to single procurement (§ 4.101–2), the Procuring Department shall make the Determinations and Findings.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 5—INTERDEPARTMENTAL PROCUREMENT

SUBPART D—PROCUREMENT OF PRISON-MADE SUPPLIES

The word "continental" has been removed from § 5.407. Section 5.407, as revised, reads as follows:

§ 5.407 *Exceptions.* Supplies listed in the Schedule may be procured through National Industries for the Blind or from commercial sources without securing clearance from Federal Prison Industries, Inc., under any of the following conditions:

(a) Immediate delivery or performance is required by public exigency;

(b) Suitable used supplies can be obtained;

(c) Supplies are both procured and used outside the United States and Alaska; or

(d) The total cost of the order is $25 or less.

SUBPART E—PROCUREMENT OF BLIND-MADE SUPPLIES

The word "continental" has been removed from § 5.503 (b). Section 5.503 (b), as revised, reads as follows:

§ 5.503 *Mandatory procurement of blind-made supplies.* * * *

(b) Supplies listed in the Schedule may be procured from commercial sources under any of the conditions set forth below without securing clearance:

(1) military necessity requires delivery within two weeks;

(2) the procurement is less than a single unit as listed in the Schedule or is for $25 or less; or

(3) supplies are both procured and used outside the United States and Alaska.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 6—FOREIGN PURCHASES

SUBPART C—DUTY AND CUSTOMS

Section 6.302.5, as revised, reads as follows:

§ 6.302–5 *Duty-free entry certificate.* The duty-free entry certificate referred to in this part will be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto, and will be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (indicate Army, Navy or Air Force) and it is accordingly requested that such material be admitted free of duty pursuant to 10 U. S. C. 2383.

(Name)

(Title), who has been designated to execute free entry certificates for the above-named Department

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(Grade) (Organization)

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

Sections 7.104–11, 7.104–12, 7.104–13, 7.104–14 and 7.104–15, as revised, read as follows:

§ 7.104–11 *Excess profit.* (a) Pursuant to 10 U. S. C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000 known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFITS

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U. S. C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections: *Provided, however,* That this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U. S. C. 2382 or 7300, the foregoing clause should be

modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U. S. C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U. S. C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation or fire control, the provisions of 10 U. S. C. 2382 and 7300, are not applicable to this contract.

§ 7.104–12 *Military security requirements.* Insert the following clause in all contracts which are classified by a Department as "Confidential," including "Confidential—Modified Handling Authorized," or higher and in any other contracts the performance of which will require access to such classified information or material, except that this clause shall not be used in contracts performed outside the United States, its Territories, its possessions and Puerto Rico. In those cases where the situation so warrants because of the nature of the item, or conditions under which it is to be produced, the contract shall provide and establish by a separate contract provision such additional security safeguards as may be required for the protection of that item. When the "Military Security Requirements" clause is inserted in any contract, the contracting officer or his authorized representative shall prepare and transmit to the contractor, material inspector, and such other interested agencies as may be determined by the Departments, a Security Requirements Check List (DD Form 254) in accordance with § 16.811 of this subchapter.

MILITARY SECURITY REQUIREMENTS

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential" including "Confidential—Modified Handling Authorized" or higher.

(b) The Government shall notify the Contractor of the security classification of this contract and the elements thereof, and of any subsequent revisions in such security classification by the use of a Security Requirements Check List (DD Form 254).

(c) To the extent the Government has indicated as of the date of this contract or thereafter indicates security classification under this contract as provided in paragraph (b) above, the Contractor shall safeguard all classified elements of this contract and shall provide and maintain a system of security controls within its own organization in accordance with the requirements of:

(i) the Security Agreement (DD Form 441), including the Department of Defense Industrial Security Manual for Safeguarding Classified Information as in effect on date of this contract, and any modification to the Security Agreement for the purpose of adapting the Manual to the Contractor's business; and

(ii) any amendments to said Manual made after the date of this contract, notice of which has been furnished to the Contractor by the Security Office of the Military Department having security cognizance over the facility.

(d) Representatives of the Military Department having security cognizance over the facility and representatives of the contracting Military Department shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the Contractor is not complying with the security requirements of this contract the Contractor shall be informed in writing by the Security Office of the cognizant Military Department of the proper action to be taken in order to effect compliance with such requirements.

(e) If subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause and the security costs under this contract are thereby increased or decreased, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause in this contract.

(f) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (f) but excluding the last sentence of paragraph (e) of this clause.

(g) The Contractor also agrees that it shall determine that any subcontractor proposed by it for the furnishing of supplies and services which will involve access to classified information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified information.

§ 7.104–13 *Domestic food, clothing, cotton, spun silk yarn for cartridge cloth, or wool.* In all contracts for the procurement of any article of food, clothing, cotton, spun silk yarn for cartridge cloth, or wool, not excepted from the prohibition of annual appropriation acts as set forth in §§ 6.106–1 and 6.107 of this subchapter, insert the following clause:

DOMESTIC FOOD, CLOTHING, COTTON, SPUN SILK YARN FOR CARTRIDGE CLOTH, OR WOOL

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, spun silk yarn for cartridge cloth, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused or produced in the United States, its Territories, or its possessions: *Provided,* That this clause shall have no effect to the extent that the Secretary has determined as to any such articles that a satisfactory quality and sufficient quantity cannot be procured as and when needed at United States market prices: *Provided further,* That nothing herein shall preclude the delivery of foods under this contract which have been manufactured or processed in the United States, its Territories, or its possessions.

§ 7.104–14 *Utilization of small business concerns.* Insert the clause set forth below in all fixed-price supply contracts, in amounts exceeding $5,000, except those contracts entered into with foreign contractors which are to be performed outside of the United States, its Territories, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress to bring about the greatest utilization of small business concerns which is consistent with efficient production.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

§ 7.104–15 *Examination of records.* Pursuant to 10 U. S. C. 2313 (b) the following clause will be inserted in all negotiated fixed-price supply contracts and purchase orders in excess of $1,000.

EXAMINATION OF RECORDS

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $1,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

SUBPART B—CLAUSES FOR COST-REIMBURSEMENT TYPE SUPPLY CONTRACTS

Section 7.203–9 has been revised by deletion of the word "continental" therefrom.

Section 7.203–9, as revised, reads as follows:

§ 7.203–9 *Utilization of small business concerns.* Insert the contract clause set forth in § 7.104–14, except in those contracts entered into with foreign contractors which are to be performed outside of the United States, its Territories, its possessions, and Puerto Rico.

SUBPART E—CLAUSES FOR PERSONAL SERVICES CONTRACTS

The preamble to § 7.504–1 has been revised by deletion of the word "continental" therefrom:

§ 7.504 *Clauses to be used when applicable.*

§ 7.504–1 *Military security requirements.* Insert the clause set forth below in all contracts involving security information which are classified "Top Secret," "Secret," or "Confidential," by a military department, and in any other contract, the performance of which will require access to classified matter, except that this clause is not required to be used in contracts performed outside

the United States, its Territories, its possessions, and Puerto Rico.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 8—TERMINATION OF CONTRACTS

SUBPART A—INTRODUCTION

Section 8.100 has been revised, as follows:

§ 8.100 *Scope of part.* This part establishes uniform policies relating to the termination of contracts. It sets forth: (a) the policies and methods to be followed in connection with the termination of contracts for the convenience of the Government; (b) provisions as to the settlement of contracts so terminated, including disposition of property incident to termination; and (c) approved forms for use in terminating contracts for the convenience of the Government and in the settlement of such contracts.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 10—BONDS AND INSURANCE

SUBPART E—INSURANCE UNDER COST-REIMBURSEMENT TYPE CONTRACTS

Section 10.501–1 has been revised by removal of the word "continental" therefrom.

Section 10.501–1, as revised, reads as follows:

§ 10.501 *Policy.* • • •

§ 10.501–1 *Workmen's compensation and employers' liability insurance.* Compliance with applicable workmen's compensation and occupational disease statutes will be required, and the insurance policy will also include employers' liability coverage, where available. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases will be required under the employers' liability section of the insurance policy; however, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. The clause set forth in § 10.403 shall be included in all construction contracts, as defined in § 10.101–6, to be performed outside the United States.

SUBPART G—SPECIAL CASUALTY INSURANCE RATING PLANS

§ 10.700 *Scope of subpart.* This subpart sets forth principles and requirements for use of the National Defense Projects Rating Plan, which is available for application on both domestic and foreign contracts which meet the eligibility requirements set forth herein. This part likewise applies to the World War II War Department Insurance Rating Plan, also known as the War Projects Insurance Rating Plan, which is currently available for application only outside the United States. These plans provide a special rating formula for the purchase of the casualty insurance coverages listed in §§ 10.501–1 through 10.501–3, and are mandatory as to contracts which meet the use and eligibility standards set forth in § 10.703. Inclusion under the prime contractor's Rating Plan policies of similar coverages for subcontractors, whose contracts with the prime contractor provide that the insurance shall be furnished by the prime contractor, shall be automatic if the subcontract operations are at the project site, unless the military departments specifically direct otherwise. Subcontractors whose operations are away from the projects site will not be covered under the prime contractor's Rating Plan policies unless the prime contractor is specifically directed by the military departments to request inclusion of such subcontractors.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 11—FEDERAL, STATE AND LOCAL TAXES

SUBPART A—FEDERAL EXCISE TAXES

1. Section 11.103–2, as revised, reads as follows:

§ 11.103–2 *Transportation of persons.* (a) A tax of 10 percent is imposed on amounts paid for the transportation of persons by rail, motor vehicle, water, or air, including charges for seating or sleeping accommodations incident to such transportation, as follows:

(1) On amounts paid within the United States for taxable transportation, as defined in paragraph (b) of this section; and

(2) On amounts paid outside the United States for taxable transportation, as defined in paragraph (b) of this section, which both begins and ends in the United States.

(b) Taxable transportation:

(1) Includes transportation which begins in the United States or in Canada or Mexico within 225 miles of the nearest point to the United States, and ends in the United States or in the aforementioned 225-mile zone;

(2) Includes transportation that begins in the United States or in the 225-mile zone and ends outside such area, transportation that begins outside the United States or the 225-mile zone and ends inside such area, and transportation that begins and ends outside the United States and the 225-mile zone, but only to the extent that such transportation is directly or indirectly from one port or station in the United States to another port or station in the United States. (Even though it is "taxable transportation" it may not be subject to tax if the payment is made outside the United States, according to the limitation set forth in paragraph (a) (2) of this section; and

(3) Irrespective of subparagraphs (1) and (2) of this paragraph, does not include any portion of transportation which—

(i) Is outside the United States;

(ii) Is not, directly or indirectly, from the border of the United States or a port or station in the 225-mile zone to a port or station in the 225-mile zone;

(iii) Begins either where the route of transportation leaves the United States or a port or station in the 225-mile zone, and ends either where the route enters the United States or a port or station in the 225-mile zone; and

(iv) Passes through a point in excess of 225 miles from the United States on an imaginary direct line between the beginning and ending points specified in subdivision (iii) of this subparagraph.

(c) In determining taxable transportation, a round trip is considered to consist of transportation from the point of origin to the destination, and a separate transportation thereafter.

(d) The tax does not apply to—

(1) Any separable and itemized charges other than those for transportation of a person, such as for an automobile, baggage, meals, hotel accommodations, insurance, and the like;

(2) Charges incident to the charter of a conveyance for the transportation of persons, such as for parking, icing, sanitation, layover, movement of equipment in deadhead service, dockage, and the like; or

(3) Charges for transportation by motor vehicles having a seating capacity of less than 10 persons and not operated on an established line.

2. Section 11.103–3, as revised, reads as follows:

§ 11.103–3 *Transportation of property.* (a) A tax of 3 percent (4 cents per short ton on coal, including lignite, coal dust, coke briquettes) is imposed upon amounts paid to a person engaged in the business of transporting property for hire by rail, motor vehicle, water, or air. The tax applies to—

(1) Amounts paid within or without the United States for transportation from one point in the United States to another; and

(2) Amounts paid within the United States for that portion within the United States of transportation from a point outside to a point within the United States.

(b) The tax does not apply to the transportation of property in the course of exportation or shipment to a possession of the United States or to Puerto Rico (see § 11.201); neither does it apply to an uninterrupted shipment moving through the United States or its Territories from a possession, Puerto Rico, or a foreign point to a possession, Puerto Rico, or a foreign point. If any such shipment is interrupted in the United States or its Territories for any purpose of the shipper rather than a fault of transportation, it is treated as two shipments, one to and the other from the point of interruption, of which the former may be taxable in whole or in part according to the rules stated above.

(c) The transportation tax does not apply to a shipment under a commercial bill of lading consigned to an officer of a military department at a port of exportation, provided that the tax is expressly excluded from the contract or subcontract price and the prescribed exemption certificate is filed with the carrier. This relief from the transportation tax shall

be utilized, in accordance with Departmental procedures, whenever it is economically advantageous to do so.

(d) For the taxability of shipments under a Government bill of lading, whether or not exported, see § 11.202 (c).

(e) The amount subject to tax includes—

(1) Any charges for services incident to the transportation movement, such as loading, unloading, blocking, staking, elevation, transfer in transit, ventilation, refrigeration, icing, storage, demurrage, lighterage, trimming of cargo in vessels, wharfage, and handling, feeding, and watering of livestock; and

(2) Separate and itemized charges for baggage transported in connection with the transportation of persons, including incidental charges for excess weight or value, storage, transfer, special delivery, and the like.

The tax applies to all forms of transportation, local or otherwise, including drayage, towing, ferrying, and switching; however, it does not apply to the transportation of earth, rock, or other material excavated within the boundaries of, and in the course of, a construction project and transported to any place within, or adjacent to, the boundaries of such project, nor does it apply to the transportation of coal from the mine to a preparation plant. No amount paid for the transportation of property is subject to tax if and to the extent that a tax on such transportation previously has been paid. An amount paid for the transportation of coal, coke, or briquettes is not taxable if there has been a previous taxable transportation of the coal or coal dust from which the coke or briquettes were made.

SUBPART B—EXEMPTIONS FROM FEDERAL EXCISE TAXES

Section 11.201, as revised, reads as follows:

Sec.
11.201 Supplies for exportation or shipment to a possession or to Puerto Rico.
11.201–1 Retailers' excise taxes.
11.201–2 Manufacturers' excise taxes.

AUTHORITY: §§ 11.201 to 11.201–2 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 11.201 *Supplies for exportation or shipment to a possession or to Puerto Rico.* Exemption is available from the retailers' and manufacturers' excise taxes on the sale of supplies for export or for shipment to a possession of the United States, or to Puerto Rico. It is to be noted that the transportation tax on property is not applicable to shipments for export or to a possession of the United States or to Puerto Rico. See § 11.103–3.

§ 11.201–1 *Retailers' excise taxes.* Pursuant to section 4056 of the Internal Revenue Code (which supersedes sec. 2406, I. R. C. 1939) and applicable Treasury Regulations, exemption is available from the retailers' excise taxes on sales of supplies for export or for shipment to a possession of the United States or to Puerto Rico. This exemption shall be utilized, in accordance with Departmental procedures, by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession or to Puerto Rico, if—

(a) The purchase is substantial; and

(b) Exportation or shipment to a possession or to Puerto Rico is intended to follow not more than 6 months after title passes to the Government.

§ 11.201–2 *Manufacturers' excise taxes.* Pursuant to section 4225 of the Internal Revenue Code (which supersedes secs. 3449 and 2705, I. R. C. 1939) and applicable Treasury Regulations, exemption is available from the manufacturers' excise taxes on sales of supplies for export or for shipment to a possession of the United States or to Puerto Rico. This exemption shall be obtained only when—

(a) The purchase is substantial; and

(b) Exportation or shipment to a possession or to Puerto Rico is intended to follow not more than 6 months after title passes to the Government.

This exemption is limited to sales by a manufacturer, and is not applicable to sales for export or shipment to a possession or to Puerto Rico from the stock of a dealer who was not the manufacturer, producer, or importer.

PART 12—LABOR

SUBPART B—CONVICT LABOR

Sections 12.201 and 12.202, as revised, read as follows:

§ 12.201 *Basic requirement.* Pursuant to the policy set forth in the Act of February 23, 1887 (18 U. S. Code 436), and in accordance with the requirements of Executive Order No. 325A of May 18, 1905, all contracts entered into by any Department involving the employment of labor within the United States, shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts.

§ 12.202 *Applicability.* The requirement set forth in § 12.201 applies, except as stated below, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of persons on parole or probation, or of persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to the following kinds of contracts:

(a) Any contracts subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart F of this part), which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract";

(b) Any contract (1) for the purchase of supplies or services from Federal Prison Industries, Inc., or (2) for the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

SUBPART D—LABOR STANDARDS IN CONSTRUCTION CONTRACTS

Sections 12.401, 12.403–1 and 12.403–2, as revised, read as follows:

§ 12.401 *Statutes and regulations.*

(a) *Davis-Bacon Act.* The Davis-Bacon Act (Act of March 3, 1931, as amended; 40 U. S. Code 276a), provides that certain contracts over $2,000 entered into by any Department for the construction, alteration, or repair (including painting and decorating) of public buildings or public works shall contain a provision (see § 12.403) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wages as determined by the Secretary of Labor.

(b) *Copeland Act.* The Copeland ("Anti-Kickback") Act (18 U. S. Code 874 and 40 U. S. Code 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction or repair of public buildings or public works (including those financed in whole or in part by loans or grants from the United States) to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any Department shall contain a provision (see § 12.403) to the effect that the Contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

(c) *Eight-Hour Laws.* See § 12.301. (However, with respect to construction contracts, the applicable statutes are 40 U. S. Code 321–326.)

(d) *Department of Labor regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (15 F. R. 3176), the Secretary of Labor has issued Regulations Part 3, Title 29, Subtitle A, Code of Federal Regulations (7 F. R. 686 as amended) and Regulations Part 5, Title 29, Subtitle A, Code of Federal Regulations (16 F. R. 4430 as amended), providing for the administration and enforcement of these statutes in construction contracts. The requirements under the Davis-Bacon Act and the Copeland Act apply only to the United States and its Territories while the Eight-Hour Laws apply also to other areas over which the United States has direct legislative control.

§ 12.403 *Contract clauses.*

§ 12.403–1 *Clauses for general use.* Except as provided in § 12.403–4 every construction contract in excess of $2,000 for work within the United States or its Territories shall include the following clauses:

(1) *Davis-Bacon Act (40 U. S. C. 276a–276a–7).*

DAVIS-BACON ACT (40 U. S. C. 276a–276a–7)

(a) All mechanics and laborers employed or working directly upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are per-

mitted by the Copeland Act ("Anti-Kickback") Regulations (29 CFR, Part 3)) the full amounts due at time of payment, computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics; and a copy of the wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(c) Paragraphs (a) and (b) of this clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract under such prime contract.

(2) *Eight-Hour Laws — overtime compensation.*

EIGHT-HOUR LAWS—OVERTIME COMPENSATION

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Contractor or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every laborer and mechanic employed by the Contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause and all penalties thus imposed shall be withheld for the use and benefit of the Government: *Provided*, that this stipulation shall be subject in all respects to the exceptions and provisions of the Eight-Hour Laws, as set forth in 40 U. S. C. 321, 324, 325, 325a, and 326, which relate to hours of labor and compensation for overtime.

(3) *Apprentices.*

APPRENTICES

Apprentices will be permitted to work only under a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized Council exists in a State, under a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

(4) *Payroll records and payrolls.*

PAYROLL RECORDS AND PAYROLLS

(a) Payroll records will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor will make his employment records available for inspection by authorized representatives of the Contracting Officer and the U. S. Department of Labor, and will permit such representatives to interview employees during working hours on the job.

(b) A certified copy of all payrolls will be submitted weekly to the Contracting Officer. The Government prime Contractor will be responsible for the submission of certified copies of the payrolls of all subcontractors. The certification will affirm that the payrolls are correct and complete, that the wage rates contained therein are not less than the applicable rates contained in the wage determination decision of the Secretary of Labor attached to this contract and that the classifications set forth for each laborer or mechanic conform with the work he performed.

(5) *Copeland ("Anti-Kickback") Act—nonrebate of wages.*

COPELAND ("ANTI-KICKBACK") ACT—NONREBATE OF WAGES

The regulations of the Secretary of Labor applicable to Contractors and subcontractors (29 CFR Part 3), made pursuant to the Copeland Act, as amended (40 U. S. C. 276c) and to aid in the enforcement of the Anti-Kickback Act (18 U. S. C. 874) are made a part of this contract by reference. The Contractor will comply with these regulations and any amendments or modifications thereof and the Government prime Contractor will be responsible for the submission of affidavits required of subcontractors thereunder. The foregoing shall apply except as the Secretary of Labor may specifically provide for reasonable limitations, variations, tolerances and exemptions.

(6) *Withholding of funds to assure wage payment.*

WITHHOLDING OF FUNDS TO ASSURE WAGE PAYMENT

There may be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the Contractor or any subcontractor the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanic all or part of the wages required by this contract, the Contracting Officer may take such action as may be necessary to cause the suspension, until such violations have ceased, of any further payment, advance, or guarantee of funds to or for the Government prime Contractor.

(7) *Subcontracts—termination.*

SUBCONTRACTS—TERMINATION

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Eight-Hour Laws—Overtime Compensation," "Apprentices," "Payroll Records and Payrolls," "Copeland ('Anti-Kickback') Act—Nonrebate of Wages," "Withholding of Funds to Assure Wage Payment," and "Subcontracts—Termination" in all subcontracts, and the Contractor further agrees that a breach of any of the requirements of these clauses may be grounds for termination of this contract. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government prime Contractor."

When using U. S. Standard Form 23, the "Subcontracts—Termination" clause therein shall be used in lieu of the above clause.

§ 12.403–2 *Contracts for $2,000 or less.* Except as provided in § 12.403–4, every construction contract for $2,000 or less for work within the United States or its Territories, shall include (a) the Eight-Hour Laws—Overtime Compensation Clause set forth in § 12.403–1 (b); (b) the Copeland ("Anti-Kickback") Act—Nonrebate of Wages Clause set forth in § 12.403–1 (e); and (c) the Subcontracts—Termination Clause set forth above in § 12.403–1 (g), except that the first sentence thereof shall be modified to refer only to the clauses entitled "Eight-Hour Laws—Overtime Compensation," "Copeland ('Anti-Kickback') Act—Nonrebate of Wages" and "Subcontracts—Termination."

SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

Section 12.602, as revised, reads as follows:

§ 12.602 *Applicability.* The requirement set forth in § 12.601 applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, its Territories, Puerto Rico, and the Virgin Islands, and which exceed or may exceed $10,000 in amount. Pursuant to the Walsh-Healey Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of said Act, and exemptions and procedures thereunder. These regulations and interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations." In addition to the interpretations stated in that document, attention is directed to an opinion of the Department of Labor that contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Act; and that contracts in an amount exceeding $10,000, which are subsequently modified to a figure of $10,000 or less, are not subject to said Act with respect to work performed after such modification if modification is effected by mutual agreement.

SUBPART H—NONDISCRIMINATION IN EMPLOYMENT

Section 12.803, as revised, reads as follows:

§ 12.803 *Applicability.* The nondiscrimination requirements are applicable to contracts and first-tier subcontracts as herein provided.

(a) The clause set forth in § 12.802 shall be included in all contracts involving the employment of labor, except:

(1) The clause shall not be included in—

(i) Contracts to be performed outside the United States where no recruitment

of workers within the United States is involved;

(ii) Contracts to meet special requirements or emergencies, if recommended by the President's Committee on Government Contracts (see § 12.804); and

(iii) Purchase orders on Standard Form 44.

(2) The clause shall be modified:

(i) In purchase orders for $1,000 or less which are not within the above exceptions, by deleting the last sentence of paragraph (a) and all of paragraph (b);

(ii) In contracts for $5,000 or less, other than purchase orders for $1,000 or less, by deleting the last sentence of paragraph (a) when in the judgment of the contracting officer administration of the posting requirement of a clause is impracticable. For example, contracts for off-the-shelf items and contracts requiring delivery of supplies or performance of services within 60 days from the date of the contract.

(b) Notwithstanding paragraph (b) of the clause, a contractor is not required to insert any nondiscrimination clause in subcontracts of the kind described in paragraph (a) (1) (i) and (ii) of this section.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 16—PROCUREMENT FORMS

Section 16.000, as revised, reads as follows:

§ 16.000 *Scope of part.* This part prescribes forms for use in connection with the procurement of supplies and services. In using these forms for procurement outside the United States, its Territories, its possessions, and Puerto Rico, contract provisions which are made inapplicable to such procurement by this subchapter or by departmental procedures may be deleted.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

G. C. BANNERMAN,
Director for Procurement Policy, Office of the Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 57-10797; Filed, Dec. 30, 1957; 8:46 a. m.]

[Amdt. 24]

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments are made to this subchapter:

PART 1—GENERAL PROVISIONS

SUBPART A—INTRODUCTION

A new § 1.201–19 has been added, cross-referencing this subpart to the definition for "small business concerns" set forth in § 1.701–1. Section 1.201–19 reads as follows:

§ 1.201–19 *Small business concern.* See § 1.701–1.

SUBPART C—GENERAL POLICIES

Section 1.302–3 has been completely revised and now covers the procedures for contracting with production pools approved either under section 708 of the Defense Production Act of 1950, as amended, or under section 217 of the Small Business Act of 1953, as amended. Section 1.302–3, as revised, reads as follows:

§ 1.302 *Sources of supplies.* • • •

§ 1.302–3 *Production pools*—(a) *Description.* A production pool is a group of concerns (1) who have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services for Defense use, (2) who have entered into a production pool agreement governing their organization, relationship, and procedure, and (3) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), or in accordance with section 217 of the Small Business Act of 1953, as amended (Small Business Production Pool). Production pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healy Public Contracts Act and of § 1.201–9.

(b) *General rule.* Except as provided in this section, a production pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a production pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the SBA or ODM notification of approval of the pool. Each Department will expeditiously disseminate to contracting officers information received from SBA or ODM concerning the approval of production pools.

(d) *Contracting with pools.* (1) A bid or proposal of a production pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in its own name, the pool agreement shall be considered in determining its responsibility pursuant to § 1.307.

SUBPART G—SMALL BUSINESS CONCERNS

1. *Small business concerns—general.* A new Subpart G of Part 1 codifies the following Department of Defense issuances, which have been rescinded:

DOD Instruction 4100.9, dated November 14, 1955, Subject: Cooperation with Small Business Administration.

DOD Directive 4100.10, dated December 16, 1954, Subject: Revised Department of Defense Small Business Policy.

DOD Instruction 4100.20, dated April 19, 1955, Subject: Department of Defense Small Business Subcontracting Policy.

DOD Directive 4105.21, dated June 19, 1952, Subject: Defense Production Pools.

The new Subpart G sets forth (i) policy with reference to small business concerns, (ii) policy governing relationship with the Small Business Administration, (iii) small business set-aside procedures, and (iv) the Defense Small Business Subcontracting Program. Changes made in the course of codification are briefed below.

2. *Small business concerns—definitions.* Pursuant to regulations of the Small Business Administration, for the purpose of procurement preferences, a small business concern is now defined in § 1.701–1 as a concern that (i) is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees, or (ii) is certified as a small business concern by SBA. There are subsidiary definitions of what constitutes "affiliates" and "dominance in a field of operations." The number of employees is determined by a formula set forth in § 1.701–1 (d). In order to be eligible for small business preferences a regular dealer must furnish products manufactured by small business concerns in the United States, it Territories, its possessions, or Puerto Rico (see § 1.701–4).

3. *Small business concerns—determination of status.* Section 1.703 provides that, in the absence of protest, the contracting officer shall accept at face value either a small business certificate issued by SBA or the statement made by the bidder or offeror as specified in §§ 1.701–1 and 1.701–4. Notwithstanding, a contracting officer is authorized to question the status of a purported small business concern and request confirmation by SBA.

4. *Small business concerns—negotiation of partial set-asides.* Section 1.706–6 sets forth the procedure for negotiating partial set-asides. Subparagraph (d) now provides, in case of a single award in the non-set-aside portion of the procurement, that awards for the set-aside portion shall be made at the unit price of the non-set-aside portion. In case of multiple awards on the non-set-aside portion at different unit prices, awards for the set-aside portion shall be made at the highest unit price awarded on the non-set-aside portion.

Sec.
1.700 Scope of subpart.
1.701 Definitions.
1.701–1 Small business concern.
1.701–2 Established supplier.
1.701–3 Potential supplier.

AUTHORITY: §§ 1.700 to 1.707–5 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 1.700 *Scope of subpart.* To implement the Small Business Act of 1953, as amended, and the Armed Services Procurement Act, as amended, this subpart sets forth (a) policy with reference to small business concerns, (b) policy governing relationship with the Small Business Administration, (c) small business set-aside procedures, and (d) the Defense Small Business Subcontracting Program.

§ 1.701 *Definitions.* As used throughout this subpart, the following terms shall have the meanings set forth below.

§ 1.701–1 *Small business concern—*(a) *General definition.* A small business concern is a concern that (1) is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by SBA.

(b) *Dominance in field of operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in an area of business activity. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, sales territory, and business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships.

(d) *Number of employees.* In connection with the determination of small business status, except as SBA otherwise determines in a particular industry or part thereof, "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the 15th of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the 15th of each month.

(e) *Small business certificate.* A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 203 and 212 of the Small Business Act of 1953, as amended, certifying that the holder of the certificate is a small business concern for the purpose of Government procurement and in accordance with the terms of the certificate.

§ 1.701–2 *Established supplier.* An "established supplier" of an item is a concern which is a "source of supplies," within the meaning of § 1.201–9, and which has supplied the items satisfactorily to one or more military departments, or a concern with which mobilization planning is in effect.

§ 1.701–3 *Potential supplier.* A "potential supplier" of an item is a concern which is a "source of supplies," within the meaning of § 1.201–9, but which is not an established supplier.

§ 1.701–4 *Regular dealer (non-manufacturer) as small business concern.* One who submits bids or offers in its own name, but who proposes to furnish a product not manufactured by itself, shall be deemed to be a small business concern only if (a) it is a small business concern within the meaning of § 1.701–1; (b) it is a regular dealer (non-manufacturer) (see § 1.201–9 (a)); and (c) in the case of a procurement set aside for small business (see § 1.706) or involving equal low bids (see § 2.406–4 of this subchapter), it agrees to furnish in the performance of the contract products manufactured or produced in the United States, its Territories, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this section does not apply to construction or service contractors.

§ 1.702 *General policy.* (a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies and services with small business concerns.

(b) Each military department shall implement this policy by affording small business concerns an equitable opportunity to compete for prime contracts in accordance with the following:

(1) bidders' mailing lists (see § 2.204 of this subchapter) shall be maintained and shall include all established and potential small business suppliers who have made acceptable application for inclusion or who appear from other information (including recommendation by the SBA representative), to be qualified for inclusion therein;

(2) Invitations for Bids or Requests for Proposals shall be sent to all firms on the appropriate list, except that where less than the complete list is to be used pursuant to § 2.204–5 of this subchapter a pro-rata number of established or potential small business suppliers shall be solicited;

(3) procurement of supplies and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements; the maximum amount of time practicable shall be allowed for preparation and submission of bids and proposals; and delivery schedules shall be suitable for small business participation; and

(4) for specification requirements, see § 2.201 (d) of this subchapter.

As to subcontracting, see § 1.707.

(c) Records of the total value of all contracts placed with small business concerns during each fiscal year, and reports based thereon, are maintained by each military department through the Department of Defense Procurement Reporting System described in § 1.110 and § 16.807 of this subchapter. Accordingly, each military department shall, in soliciting bids or proposals, request from any bidder or offeror, or other source, any information needed to determine whether the bidder or offeror is a small business concern.

§ 1.703 *Determination of status as small business concern.* (a) Except as provided in paragraph (b) of this section, the contracting officer shall accept at face value (1) a small business certificate (see § 1.701–1 (e)) that a bidder or offeror is a small business concern or (2) a statement by the bidder or offeror that it is a small business concern (see §§ 1.701–1 and 1.701–4) and that it has not previously been denied small business status by SBA.

(b) Small business certificates and statements that a bidder or offeror is a small business concern shall be effective, even though questioned in accordance with the terms of this paragraph, unless the SBA, in response to such question and within the period specified in subparagraph (3) of this paragraph, determines that the bidder or offeror in question is not a small business concern.

(1) Any bidder or offeror may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written protest to the contracting officer and to the SBA Regional Office for the region in which the questioned bidder or offeror has its principal place of business. SBA will promptly notify the contracting offi-

cer of the date of its receipt of any such protest and will advise the questioned bidder or offeror that its small business status is under review.

(2) A contracting officer may, prior to award, question the small business status of the apparently successful bidder or offeror by sending a written notice to the SBA Regional Office for the region in which the bidder or offeror has its principal place of business. Such notice shall contain a statement of the basis for questioning and of available supporting facts. SBA will promptly notify the contracting officer of the date such notice was received and will advise the bidder or offeror in question that its small business status is under review.

(3) SBA will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of its decision. If the SBA determination is not received by the contracting officer within ten working days after SBA's receipt of the protest or notice questioning small business status, it shall be presumed that the questioned bidder or offeror is a small business concern. Pending SBA determination or expiration of the ten day period, whichever is earlier, procurement action shall be suspended.

§ 1.704 *Small business officials.*

§ 1.704–1 *Director for small business.* The Director for Small Business for the Department of Defense advises the Assistant Secretary of Defense (Supply and Logistics) in matters relating to the establishment, implementation, and execution of an appropriate Small Business Program within the Department of Defense. Negotiations with SBA or other Government agencies or departments outside the Department of Defense concerning small business policy and programs shall be conducted through the Director for Small Business or with his authorization.

§ 1.704–2 *Departmental small business advisors.* Each military department shall maintain an Office of Small Business for the Department. The Chief of each Office of Small Business shall devote his efforts exclusively to small business matters. He advises the Secretary on small business matters and is responsible for implementing the Department of Defense Small Business Program within his Department and for representing his Department in negotiations with other military departments or Governmental agencies on small business matters.

§ 1.704–3 *Small business specialists.* Small business specialists shall be appointed in each principal procurement office and such other offices as the military departments may consider appropriate. They will perform such functions as are prescribed for them in furtherance of the Small Business Program.

§ 1.705 *Cooperation with the Small Business Administration.*

§ 1.705–1 *General.* The Assistant Secretary of Defense (Supply and Logistics) and the Administrator, SBA, are responsible for consulting, cooperating, and agreeing in establishing policies and programs for small business participation in Defense procurement. All Department of Defense purchasing activities are responsible for working with SBA in carrying out these policies and programs, in accordance with the provisions of this § 1.705.

§ 1.705–2 *SBA representatives.* SBA may assign one or more representatives on a full- or part-time basis to any purchasing activity of the military departments to act in its behalf in carrying out SBA policies and programs.

§ 1.705–3 *Screening of procurements.* (a) SBA representatives, when properly authorized and cleared for security, shall, upon request, be afforded an opportunity at the purchasing activity to review all proposed classified and unclassified Invitations for Bids and Requests for Proposals unless both (1) it is anticipated that the resulting contract or contracts will not exceed $10,000 and (2) the head of the purchasing activity determines that such review would unduly delay the procurement process. Where it is anticipated that the resulting contract or contracts will exceed $10,000, such SBA representative shall, upon request, be afforded an opportunity to make recommendations concerning Invitations for Bids and Requests for Proposals, including that they be exclusively or partially set aside for small business concerns. Where the Invitations for Bids or Requests for Proposals are reviewed by an SBA representative, and it is anticipated that the resulting contract or contracts will not exceed $10,000, and if the head of the purchasing activity approves, a similar opportunity to make recommendations will be afforded to the SBA representative.

(b) In any case, the contracting officer shall afford the SBA representative an opportunity to recommend, within a reasonable time, appropriate names of small business concerns for inclusion in the list of bidders or firms to be solicited in connection with a particular procurement.

§ 1.705–4 *Access to bidders' lists and other information.* SBA representatives, upon request, shall be permitted to review, inspect, study, and transcribe information from bidders' mailing lists (see § 1.702 (b)) and will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program or for determination of whether small business concerns are proportionately represented on one or more particular bidders' mailing lists.

§ 1.705–5 *Joint SBA-Defense small business set-aside program.* The Joint SBA-Defense Small Business Set-Aside Program, set forth in § 1.706, was developed by SBA and the Department of Defense to increase small business participation in Defense procurement. All press releases, reports, or other references to this program or to set-asides thereunder should refer to it as a Joint SBA-Defense Program and should avoid drawing any distinction between set-asides based on proposals of SBA representatives and those made independently of such proposals.

§ 1.705–6 *Certificates of competency.* (a) SBA has the statutory authority to certify the competence of any small business concern as to capacity (see § 1.307 (c) and (d) and credit (see § 1.307 (b)). Contracting officers shall accept SBA certificates of competency as to capacity and credit as conclusive: *Provided,* If the contracting officer has substantial doubts as to the firm's ability to perform, he shall prior to award refer the matter to higher authority in accordance with Departmental procedures.

(b) If a small business concern has submitted an otherwise acceptable bid or proposal but has been found by the contracting officer to be nonresponsible as to capacity or credit, and if the bid or proposal is to be rejected for this reason alone, (1) SBA shall be notified of the circumstances so as to permit it to issue a certificate of competency, and (2) award shall be withheld pending either SBA issuance of a certificate of competency or the expiration of ten working days after SBA is so notified, which ever is earlier; subject to the following:

(i) this procedure is mandatory except where the contracting officer certifies in writing that award must be made without delay and inserts in the contract file a statement signed by the contracting officer justifying the certificate;

(ii) this procedure does not apply to proposed awards of not more than $1,000; and

(iii) this procedure is optional, within the discretion of the contracting officer, as to proposed awards of more than $1,000 but less than $10,000.

To assist SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the purchasing activity shall make available to SBA all pertinent data, including technical and financial information, with respect to the small business concern involved.

§ 1.705–7 *Performance of contract by SBA.* In accordance with section 208 of the Small Business Act of 1953, as amended, in any case in which the Administrator of SBA certifies to the Secretary concerned that SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to SBA upon such terms and conditions, consistent with this regulation, as may be agreed upon between SBA and the contracting officer.

§ 1.706 *Set-asides for small business.*

§ 1.706–1 *General.* Any procurement, or an appropriate part thereof, whether classified or unclassified, shall be set aside for the exclusive participation of small business concerns when such action is (a) jointly determined by an SBA representative and the contracting officer, or (b) if no SBA representative is available, is unilaterally determined by the contracting officer, to be either in the interest of maintaining or mobilizing the Nation's full productive capacity or in the interest of war or national defense programs. Insofar as practical, joint determinations shall be used as a basis for set-asides rather than unilateral determinations; but the im-

practicality of obtaining a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination in an otherwise appropriate case.

§ 1.706–2 *Review of SBA set-aside proposals.* Upon a recommendation of an SBA representative that a procurement, or portion thereof, be set aside for small business, the contracting officer shall promptly either (1) concur in the recommendation, or (2) disapprove, stating in writing his reasons for disapproval. The SBA representative shall be allowed two working days to appeal any such disapproval to the head of the purchasing activity or his designee for final decision. Contracting officers shall not consider any one of the following factors, standing alone, as sufficient cause for disapproving a set-aside recommended by an SBA representative:

(a) a large percentage of previous procurements of the item in question has been placed with small business concerns;

(b) the item to be purchased is on a Planned Procurement List or under the Production Allocation Program;

(c) the item to be purchased is on a Qualified Products List;

(d) the item or service to be procured is available from only one known source and the source is a small business concern;

(e) a period of less than thirty days from date of issuance of Invitations for Bids or Requests for Proposals is prescribed for the submission of the bids or proposals; or

(f) small business concerns are receiving a fair proportion of the total contracts for supplies and services.

§ 1.706–3 *Withdrawal of set-asides.* If, prior to the award of a contract involving a set-aside for small business, the contracting officer considers that procurement of the set-aside from a small business concern would be detrimental to the public interest (e. g., because of unreasonable price), the contracting officer may withdraw a unilateral set-aside determination or initiate withdrawal of a joint set-aside determination. In the case of a joint set-aside determination, if the SBA representative does not agree to withdrawal, the matter shall be referred to the head of the purchasing activity or his designee, whose decision shall be final unless the head of the activity, or such designee, refers the matter to higher authority for final decision. A signed memorandum of the withdrawal of any set-aside shall be made and retained in the contract file.

§ 1.706–4 *Reporting for Department of Commerce procurement synopsis.* See § 2.206–3 of this subchapter.

§ 1.706–5 *Total set-asides.* (a) The entire amount of a procurement shall be set aside for exclusive small business participation (see § 1.706–1) where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. A procurement shall not be totally set aside unless such a reasonable expectation exists. However, as to partial set-asides see § 1.706–6.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." The latter method shall be used wherever possible. Invitations for Bids and Requests for Proposals shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Part 2 of this subchapter, except that bids and awards shall be restricted to small business concerns.

(c) In procurements involving total set-asides for small business, each Invitation for Bids or Request for Proposals shall contain substantially the following notice:

NOTICE TO PROSPECTIVE BIDDERS OR OFFERORS

Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the contracting officer, alone, or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity or in the interest of war or national defense programs. A small business concern is a concern that—

(i) Is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or

(ii) Is certified as a small business concern by the Small Business Administration.

In addition to meeting these criteria, a dealer submitting bids or proposals in its own name must be a regular dealer (non-manufacturer) and agree to furnish the product of a small business manufacturer or producer in the performance of the contract: *Provided,* That this requirement as to dealers does not apply to construction or service contractors. The right is reserved to reject any or all bids or proposals when it is in the interest of the Government to do so. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive.

§ 1.706–6 *Partial set-asides.* (a) A portion of a procurement shall be set aside for exclusive small business participation (see § 1.706–1) where—

(1) The procurement is not totally set aside pursuant to § 1.706–5;

(2) The procurement is severable into two or more economic production runs; and

(3) Two or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement not less than an economic production run.

(b) Where a portion of a procurement is to be set aside for small business pursuant to paragraph (a) of this section, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity.

(c) In procurements involving partial set-asides for small business, each Invitation for Bids or Request for Proposals shall contain substantially the following notice:

NOTICE TO PROSPECTIVE BIDDERS OR OFFERORS

[units] of this procurement are to be awarded only to one or more small business concerns. Negotiation for award of the portion of this procurement set-aside for small business will be conducted only with responsible small business concerns who submit responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid or initial proposal. This action is based on a determination by the contracting officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full production capacity or in the interest of war or national defense programs. A small business concern is a concern that—

(i) Is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or

(ii) Is certified as a small business concern by the Small Business Administration.

In addition to meeting these criteria, a dealer submitting bids or proposals in its own name must be a regular dealer (non-manufacturer) and agree to furnish the product of a small business manufacturer or producer in the performance of the contract; *Provided,* That this requirement as to dealers does not apply to construction or service contractors. The right is reserved to reject any or all bids or proposals when it is in the interest of the Government to do so.

(d) After the entire non-set-aside portion has been awarded, procurement of the set-aside portion shall in all instances be effected by conventional negotiation. The negotiation shall be conducted only with those bidders or offerors who have submitted bids or initial proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiation shall be conducted with such small business concerns in the order of their bids or proposals on the non-set-aside portion beginning with the lowest responsive bid or initial proposal. Multiple awards shall be made where appropriate. In conducting negotiations for the set-aside portion, only the unit price of the contracts awarded on the non-set-aside portion may be disclosed. Contracts for the set-aside portion shall be at prices determined as follows:

(1) When the procurement of the non-set-aside portion has resulted in one contract only, or in multiple awards all at the same price, any awards for the set-aside portion shall be made at the unit price of the non-set-aside portion;

(2) When the procurement of the non-set-aside portion has resulted in multiple awards at different unit prices, any awards for the set-aside portion shall be made at the highest unit price of the non-set-aside portion.

(e) If the entire set-aside portion is not procured by the method set forth in paragraph (d) of this section, the deter-

mination referred to in § 1.706–1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations.

§ 1.706–7 *Contract authority.* Contracts for total or partial set-asides, whether entered into by conventional negotiation (see § 1.706–5 (b) and § 1.706–6 (d)) or by "Small Business Restricted Advertising" (see § 1.706–5 (b)), shall cite as authority 10 U. S. C. 2304 (a) (17) and section 214, Small Business Act of 1953, as amended, in the case of a joint determination, or 10 U. S. C. 2304 (a) (1) through (17), as appropriate, in the case of a unilateral determination.

§ 1.707 *Subcontracting.*

§ 1.707–1 *General policy.* It is the policy of the Department of Defense that small business concerns be afforded an equitable opportunity to compete for Defense subcontracts within their capabilities.

§ 1.707–2 *Required clause.* The clause, "Utilization of Small Business Concerns," set forth in § 7.104–14 of this subchapter, shall be included in all contracts in amounts exceeding $5,000 except—

(a) Contracts for services which are personal in nature; and

(b) Contracts which, including all subcontracts thereunder, are to be performed outside the United States, its Territories, its possessions, and Puerto Rico.

§ 1.707–3 *Defense subcontracting in small business programs.* Each contractor having a prime contract in excess of $1 million which contains the clause required by § 1.707–2 and which, in the opinion of the purchasing activity, offers substantial subcontracting possibilities, will be urged by the purchasing activity to establish and conduct a "Defense Subcontracting Small Business Program" to include the following:

(a) The designation of a Small Business Liaison Officer to be responsible for—

(1) Liaison with the purchasing activity and SBA in small business matters;

(2) Compliance with the Utilization of Small Business Concerns clause; and

(3) Execution of the contractor's "Defense Subcontracting Small Business Program;"

(b) Policies to assure that small business concerns will have an equitable opportunity to compete for subcontracts, with particular regard to solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules suitable to small business participation;

(c) Maintenance of records showing whether or not each prospective subcontractor is a small business concern as defined in §§ 1.701–1 and 1.701–4;

(d) Including the Utilization of Small Business Concerns clause in subcontracts which offer substantial small business subcontracting opportunities;

(e) Requesting subcontractors having subcontracts in excess of $1 million to establish and conduct a "Defense Subcontracting Small Business Program;" and

(f) Submission of such information on subcontracting to small business as is called for on DD Form 1140.

§ 1.707–4 *Responsibility for reviewing subcontracting program.* Only one military department shall be responsible for reviewing a contractor's Defense Subcontracting Small Business Program. Such review shall be the responsibility of—

(a) The military department having industrial mobilization planning cognizance of the plant where the contract is being performed; or

(b) If (a) above is inapplicable, the military department having "plant cognizance procurement" (see § 4.101–2 (b) of this subchapter); or

(c) If neither (a) nor (b) above is applicable, the military department assigned the responsibility through coordinated action of the Director of Small Business for the Department of Defense and the Small Business Advisors of the Department concerned.

The responsible military department will determine the adequacy of the contractor's "Defense Subcontracting Small Business Program," and bring any deficiencies to the attention of the contractor's Small Business Liaison Officer with an appropriate request for corrective action.

§ 1.707–5 *Maintenance of records.* Each military department maintains a record of the extent of subcontracting and subcontracting to small business concerns by contractors which adopt "Defense Subcontracting Small Business Programs" under § 1.707–3. Such information is transmitted semiannually to the Assistant Secretary of Defense (Supply and Logistics). Pertinent records are compiled from submissions on DD Form 1140 (see § 1.707–3 (e)). A contractor which does not adopt a "Defense Subcontracting Small Business Program," or does adopt one but does not furnish subcontracting reports, shall be recorded for the period in question as "Not Reporting."

§ 1.708 *Mobilization planning.* The policy of placing a fair proportion of purchases and contracts with small business concerns (see § 1.702) applies in the field of mobilization planning and each military department shall carry on a continuing study of its production allocation procedures to include the Small Business Program to the maximum practical extent.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 3—PROCUREMENT BY NEGOTIATIONS

SUBPART A—USE OF NEGOTIATIONS

Section 3.104 has been revised by substituting a cross-reference to the new Subpart G in Part 1 of this subchapter. Section 3.104, as revised, reads as follows:

§ 3.104 *Aids to small business in negotiated procurement.* See Part 1, Subpart G, of this subchapter.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

G. C. BANNERMAN,
Director for Procurement Policy, Office of the Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 57–10798; Filed, Dec. 30, 1957; 8:46 a. m.]

[Amdt. 25]

MISCELLANEOUS AMENDMENTS

The following miscellaneous amendments are made to this subchapter:

PART 1—GENERAL PROVISIONS

SUBPART B—DEFINITIONS OF TERMS

The definitions of terms in §§ 1.201–4 and 1.201–6 have been revised; new definitions for §§ 1.201–20, 1.201–21 and 1.201–22 have been revised and read as follows:

§ 1.201 *Definitions.* • • •

§ 1.201–4 *Head of a procuring activity.* "Head of a procuring activity" includes, for the Army, the chiefs of the technical services, the Zone of Interior Army commanders, the Chief of the National Guard Bureau, the Commanding General of the Military District of Washington, U. S. Army and the commanding generals of the major oversea commands; for the Navy, the Chief of each Bureau, the Chief of Naval Research, the Aviation Supply Officer, the Commander, Military Sea Transportation Service, and the Commandant of the United States Marine Corps; for the Air Force, the Commander, Air Materiel Command. It also includes the Executive Director of the Military Medical Supply Agency, the Executive Director of the Military Petroleum Supply Agency, and the head of any other procuring activity hereafter established. The number and designation of Heads of Procuring Activities within any military department may be changed by directive of the Secretary.

§ 1.201–6 *Contracts.* "Contracts" means all types of agreements and orders for the procurement of supplies or services. It includes awards and preliminary notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders or task letters thereunder; letter contracts, letters of intent, and purchase orders. It also includes amendments and supplemental agreements with respect to any of the foregoing.

§ 1.201–20 *Contract modification.* "Contract modification" means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral ac-

tion in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (i) bilateral actions such as supplemental agreements and amendments, and (ii) unilateral actions such as change orders, notices of termination, and notices of the exercise of a contract option.

§ 1.201–21 *Amendment and supplemental agreement.* "Amendment and supplemental agreement" are synonymous, and mean any contract modification which is accomplished by the mutual action of the parties.

§ 1.201–22 *Change order.* "Change order" means a written order, signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract (§§ 7.103–2 and 7.203–2 of this subchapter) authorizes the contracting officer to order without the consent of the contractor.

SUBPART F—DEBARRED, INELIGIBLE, AND SUSPENDED BIDDERS

Section 1.601 has been revised to provide for a Joint Consolidated List of Debarred, Ineligible and Suspended Contractors for use by all of the military departments. The Joint List will be prepared by the Department of the Army upon the basis of information furnished by the other departments. Section 1.601, as revised, reads as follows:

§ 1.601 *Establishment and maintenance of a list of firms or individuals debarred or ineligible.*

§ 1.601–1 *General.* Each military department shall maintain a list of firms and individuals which it has debarred or suspended, to whom contracts will not be awarded, and from whom bids or proposals will not be solicited, in accordance with provisions of this Subpart. The list maintained by each military department will be used only as a basis for the Joint Consolidated List as prescribed in § 1.601–3.

§ 1.601–2 *Information contained in departmental lists.* Each Departmental list shall show as a minimum the following information:

(a) The names of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross-reference where more than one name is involved in a single action);

(b) The basis of authority for each action;

(c) The extent of restrictions imposed; and

(d) The termination date for each debarred listing.

§ 1.601–3 *Joint consolidated list.* By agreement among the military departments, the Department of the Army is responsible for the issuance of a Joint Consolidated List of firms and indviduals to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The Joint Consolidated List shall be kept current by notices of additions or deletions and periodic reprinting. Each military department shall furnish, not later than the 5th of each month, to the Office of the Assistant Secretary of the Army (Logistics) (Assistant Judge Advocate General), an alphabetical list of the additions, deletions, or modifications to the Joint Consolidated List, containing the information set forth in § 1.601–2. Each military department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Assistant Secretary of Defense (Supply & Logistics).

§ 1.601–4 *Protection of lists.* The Joint Consolidated and Departmental Lists, and all correspondence relating thereto, shall be protected to prevent inspection of the contents by anyone other than Government personnel required to have access thereto.

§ 1.601–5 *Sample list.* The Joint Consolidated List and Departmental Lists shall be prepared in accordance with the format of the sample set forth in § 1.608.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 2—PROCUREMENT BY FORMAL ADVERTISING

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

Section 2.405–2 (b) has been revised to authorize subject determinations to be made by the Deputy Director of Procurement, Headquarters, AMC, and Director, Contracts Division, Bureau of Yards and Docks. Section 2.405–2 (b), as revised, reads as follows:

§ 2.405 *Mistakes in bids.* • • •

§ 2.405–2 *Mistakes disclosed after opening and prior to award other than obvious or apparent mistakes of a clerical nature.* • • •

(b) Authority for making the determinations set forth in paragraph (a) of this section may be delegated, without power of redelegation, as set forth below:

(1) Department of the Army: To the Chief, Contracts Branch, Deputy Chief of Staff for Logistics; Chief of Engineers; Chief of Ordnance; The Quartermaster General.

(2) Department of the Navy: To the Director, Contracts Division, Bureau of Yards and Docks; the Assistant Chief for Purchasing, Bureau of Supplies and Accounts.

(3) Department of the Air Force: To the Deputy Director/Procurement, Headquarters, Air Materiel Command.

(R. S. 161, secs. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interprets or applies secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 3—PROCUREMENT BY NEGOTIATION

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATION

Section 3.210–2 (o) has been added, to make uniform the application of 10 U. S. C. 2304 (a) (10) in the negotiation of contracts for spare or replacement parts. Section 3.210–2 (o) reads as follows:

§ 3.210 *Supplies or services for which it is impracticable to secure competition by formal advertising* • • •

§ 3.210–2 *Application.* • • •

(o) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace.

SUBPART H—PRICE NEGOTIATION POLICIES AND TECHNIQUES

Section 3.808–5 (e) has been revised by insertion of the word "contractually" in the last sentence. Section 3.808–5 (e), as revised, reads as follows:

§ 3.808 *Pricing techniques.* • • •

§ 3.808–5 *Subcontracting* • • •

(e) In cases where the prime contract reserves a right for the contracting officer to review or approve subcontracts, the prime contract shall also reserve to the Government the right to inspect and audit the books and records of such subcontractors. Whenever such first tier subcontracts are of the cost-reimbursement, price redetermination, fixed-price incentive, or time and material type, a similar right shall be reserved to the Government to inspect and audit the books and records of lower tier subcontractors: *provided,* That such a right shall not be reserved contractually below the point where a firm fixed-price subcontract intervenes.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 4—COORDINATED PROCUREMENT

SUBPART B—POLICIES AND GENERAL PRINCIPLES

Sections 4.202, 4.203 and 4.206–1 have been revised to insert the currently applicable reference therein. Sections 4.202–1, 4.202–3, 4.203–1 and 4.206–1 now read as follows:

§ 4.202 *Responsibilities under single procurement.*

§ 4.202–1 *Single department procurement.* The Procuring Department is generally responsible for the following, under single department procurement (for specific assignment of procurement responsibilities, see Department of Defense Instruction Number 4115.1, dated March 18, 1957, Subject: Department of Defense Single Procurement Assignments, and any amendments thereto):

§ 4.202–3 *Plant cognizance procurement.* Responsibilities for procurement and mobilization planning are as set forth in Department of Defense Instruction Number 4115.1, dated March 18, 1957, Subject: Department of Defense Single Procurement Assignments, and any amendments thereto.

§ 4.203 *General principles governing implementation of procurement assignments.*

§ 4.203–1 *Standard format; development and promulgation of implementing procedures.* Implementation of a procurement assignment shall be accomplished in accordance with Section V (Implementation) Department of Defense Instruction 4115.1, dated March 18, 1957, Subject: "Implementation of Department of Defense Single Procurement Assignments," and any amendments thereto.

§ 4.206 *Purchase authorization.*

§ 4.206–1 *MIPR's or other authorized procurement requests.* (a) Military Interdepartmental Purchase Requests or other authorized procurement requests (see Part 16, Subpart F, of this subchapter), when received by the Procuring Department, shall be the authority to procure the supplies listed thereon in accordance with agreements between the military departments concerned. The Procuring Department has no responsibility to determine the validity of a stated requirement in an approved procurement request; however, it should bring to the attention of the Requiring Department apparent errors in the requirement.

(b) In coordinated procurement, the Procuring Department is authorized without referral to the Requiring Department, to deviate by 3 percent of the amount stated for each accounting classification, provided that the sum of such deviation does not exceed 3 percent of the total amount cited in the MIPR. The Procuring Department is authorized to deviate by more than 3 percent in specific assigned commodity areas where mutual agreement has been reached and so indicated in the implementing procedures. This authorization will remain available to the Procuring Department until acceptance is completed or in the case of direct-citation procurement until contract placement is completed, at which time any excess funds on the MIPR will be rescinded by the Requiring Department without the issuance of a formal amendment to the MIPR. The Requiring Department will authorize the percent variation on each MIPR, and will reserve a net amount sufficient to provide for such variation. If the deviation exceeds this percentage, referral to the Requiring Department will be necessary.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

Part 6—Foreign Purchases

A new Subpart D of Part 6 codifies DoD Directive 4105.29 (which implements the Foreign Assets Control Regulations issued by the Treasury Department in Chapter V, Title 31, Code of Federal Regulations). The new subpart sets forth the restrictions, lists Soviet-controlled areas and also certain supplies which are presumed to have a Soviet-controlled source, and prescribes a contract clause for use in contracts for supplies, services, and construction. § 6.402 provides for limited exceptions to the general policy restricting acquisitions of supplies originating from the prohibited sources. Subpart D reads as follows:

Subpart D—Purchases From Soviet-Controlled Areas

Sec.

Authority: §§ 6.401 to 6.403 issued under R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314.

§ 6.401 *Restrictions.*

§ 6.401–1 *General policy.* It is the general policy of the Department of Defense that supplies originating from sources within Soviet-controlled areas shall not be acquired for public use, notwithstanding the provisions of any other Subpart of this Part, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any supplies or services originating from Soviet-controlled areas.

§ 6.401–2 *Soviet - controlled areas.* For the purpose of this Subpart, Soviet-controlled areas are the following:

Albania.
Bulgaria.
China, excluding Taiwan (Formosa), but including Manchuria, Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, the former Kwantung Leased Territory, the present Port Arthur Naval Base Area, and Liaoning Province.
Communist-controlled area of Viet Nam and Communist-controlled area of Laos.
Czechoslovakia.
East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin).
Estonia.
Hungary.
Latvia.
Lithuania.
North Korea.
Outer Mongolia.
Poland and Danzig.
Rumania.
Union of Soviet Socialist Republics.

§ 6.401–3 *Certain supplies of foreign origin.* The following supplies, if of foreign origin and however processed, shall be presumed to have originated from Soviet-controlled (Chinese) sources and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, (b) the acquisition is approved by an authorized Treasury Department representative, or (c) the supplies are acquired directly from the countries indicated:

Bamboo, split	None.
Braids, straw	Italy, Japan.
Bristles, hog	None.
Brushes, paint	None.
Eggs, other than chicken	None.
Floor coverings, grass and straw	Japan.
Goat and kid skins	Argentina, Ethiopia (including Eritirea), Iran, Iraq.
Jade, stones, cut	None.
Menthol, natural and synthetic	Brazil.
Silk, Tussah and Muga	None.
Silk piece goods, Tussah and Muga	None.
Tung oil	Argentina, Brazil, Paraguay.
Walnuts	France, Iran, Italy, Turkey.

§ 6.401–4 *Certain supplies from Hong Kong, Macao, and Soviet-controlled areas.* The following supplies, however processed, which are or were located in or transported from or through Hong Kong, Macao, or any Soviet-controlled area (see § 6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, or (b) the acquisition is approved by an authorized Treasury Department representative.

Agar-agar.
Antimony.
Bamboo and bamboo manufactures excluding furniture.
Bismuth.
Camphor and camphor oil.
Carpets and carpet wool.
Castor beans and castor oil.
Chinaware.
Citronella oil.
Cotton manufactures.
Cotton waste.
Earthenware.
Glass, window.
Hardware manufactures including furniture.
Linen manufactures excluding wearing apparel.
Mercury.
Molybdenum.
Peanuts and peanut products.
Ramie.
Rugs.
Sesame oil and seed.
Shoes, leather-soled with nonleather uppers.
Silk manufactures, raw silk, and silk waste.
Straw manufactures excluding floor coverings.
Stones, semiprecious, including jewelry.
Tin, ores, bars, blocks, pigs, and alloys.
Tungsten, ores, and concentrates.

§ 6.401–5 *Supplies from North Korea or China.* All supplies, however processed, which are or were located in or transported from or through North Korea or China (as described in § 6.401–2) shall be presumed to have originated from Soviet-controlled (Chinese) sources, and shall not be acquired for public use unless (a) such supplies have been lawfully imported into the United States, its Territories, its possessions, or Puerto Rico, or (b) the acquisition is approved by an authorized Treasury Department representative.

§ 6.402 *Exceptions.* (a) Exceptions from the general policy will be made only pursuant to paragraph (b) of this section. Moreover, such exceptions shall be made only in unusual situations, such as cases of emergency or where supplies are not available from any other source and a substitute supply is not acceptable.

(b) Supplies, other than those covered by § 6.401–3, § 6.401–4, or § 6.401–5, originating from sources within Soviet-

controlled areas (see § 6.401–2) may be procured only when:

(1) The purchase is for $2,500 or less and the contracting officer determines there is a need for an exception in accordance with military department procedures; or

(2) The purchase is for more than $2,500 and an exception is approved by the Secretary.

A copy of the document authorizing any exception pursuant to (2) above shall be transmitted to the Assistant Secretary of Defense (International Security Affairs).

§ 6.403 *Contract clause.* In contracts for supplies, services, or construction, where acceptance is to take place outside the United States, its Territories, its possessions, or Puerto Rico, the Soviet-controlled areas listed in § 6.401–2 shall be set forth in the contract schedule, and the following clause shall be included in the contract:

SOVIET-CONTROLLED AREAS

(a) The Contractor shall not acquire for use in the performance of this contract any supplies or services originating from sources within Soviet-controlled areas, as listed in the Schedule of this contract, or from Hong Kong or Macao, without the written approval of the Contracting Officer.

(b) The Contractor agrees to insert the provisions of this clause, including the Soviet-controlled areas listed in the Schedule and this subparagraph (b), in all subcontracts hereunder.

PART 7—CONTRACT CLAUSES

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

1. Section 7.102 has been amended as follows:

§ 7.102 *Applicability.* As used throughout this subpart, the term "fixed-price supply contract" shall mean any contract (a) entered into either by formal advertising or by negotiation, other than (1) purchase orders for $5,000 or less, (2) letter contracts, (3) preliminary notices of award, and (4) amendments or supplemental agreements to contracts or purchase orders, which do not effect new procurement; (b) at a fixed price (with or without provision for price redetermination, escalation or other form of price revision as covered in § 3.403); and (c) for supplies other than (1) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (2) experimental, developmental, or research work, or (3) facilities to be provided by the Government under a "Facilities Contract" as defined in Part 13 of this subchapter (but see §§ 7.104–15 and 7.104–16 with respect to purchase orders).

2. Section 7.103–13 has been amended clarifying the point that a contract is not subject to renegotiation unless required by law. Section 7.103–13, as revised, reads as follows:

§ 7.103–13 *Renegotiation.*

RENEGOTIATION

(a) To the extent required by law, this contract is subject to the Renegotiation Act of 1951 (P. L. 9, 82d Cong., 65 Stat. 7) as amended (P. L. 764, 83d Cong., 68 Stat. 1116; P. L. 216, 84th Cong., 69 Stat. 447), and to any subsequent act of Congress providing for the renegotiation of contracts. Nothing contained in this clause shall impose any renegotiation obligation with respect to this contract or any subcontract hereunder which is not imposed by an act of Congress heretofore or hereafter enacted. Subject to the foregoing this contract shall be deemed to contain all the provisions required by Section 104 of the Renegotiation Act of 1951, and by any such other act, without subsequent contract amendment specifically incorporating such provisions.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts, as that term is defined in section 103g of the Renegotiation Act of 1951 or in any subsequent act of Congress providing for the renegotiation of contracts.

3. Section 7.103–15 (previously reserved) has been inserted as follows:

§ 7.103–15 *Soviet-controlled areas.* In accordance with the requirements of § 6.403 of this subchapter, insert the contract clause set forth therein.

4. Section 7.103–18 has been amended by correcting the cross-reference therein cited. Section 7.103–18, as revised, reads as follows:

§ 7.103–18 *Nondiscrimination in employment.* Insert the clause set forth in § 12.802 of this subchapter.

SUBPART B—CLAUSES FOR COST-REIMBURSEMENT TYPE SUPPLY CONTRACTS

1. Section 7.202 has been revised as follows:

§ 7.202 *Applicability.* As used throughout this subpart, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, letter of intent, preliminary notice of award; or amendment or a supplemental agreement to a contract which does not effect new procurment) entered into on a cost or cost-plus-a-fixed-fee basis as covered in § 3.404 of this subchapter for supplies other than (a) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property, (b) experimental, developmental, or research work, or (c) facilities to be provided by the Government under a "facilities contract" as defined in Part 13 of this subchapter.

2. Section 7.203–25 has been added as follows:

§ 7.203–25 *Soviet-controlled areas.* In accordance with the requirements of § 6.403 of this subchapter, insert the contract clause set forth therein.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 8—TERMINATION OF CONTRACTS

SUBPART G—FORMS

The subject captions in §§ 8.709 and 8.710 are revised as follows:

§ 8.709 *Settlement proposal form for cost reimbursement type contracts.* * * *

§ 8.710 *Notice of audit status date.* DD Form No. 574s: * * *

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 12—LABOR

SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

Pursuant to regulations of the Secretary of Labor and DoD Instruction 4105.44, § 12.603 (d) has been revised to require the furnishing of three copies of the Individual Procurement Action Report (DD Form 350) to the Department of Labor whenever the Walsh-Healey Public Contracts Act is applicable to a contract. Section 12.603 (d), as revised, reads as follows:

§ 12.603 *Responsibilities of contracting officers.* Whenever the Walsh-Healey Public Contracts Act is applicable, the contracting officer shall, pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective military department—

(a) Inform prospective contractors of the possible applicability of minimum wage determinations;

(b) Furnish to the contractor a poster (Form PC–13);

(c) Furnish to the contractor a form letter (Form PC–12) explaining the Walsh-Healey Act;

(d) Prepare and transmit three copies of DD Form 350 (top portion); (see § 16.803–2 (c) of this subchapter);

(e) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Act.

SUBPART G—FAIR LABOR STANDARDS ACT OF 1938

Editorial changes have been made to § 12.702. Section 12.702, as revised, reads as follows:

§ 12.702 *Suits against Government contractors.* Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each military department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. In this connection, procedures have been established, by agreement between the Department of Justice on the one hand and the military departments on the other hand, governing the defense of such Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private counsel employed by the contractor, the employment of whom is approved by the military department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

(R. S. 161, sec. 2202; 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 13—GOVERNMENT PROPERTY

SUBPART E—CONTRACT CLAUSES

1. An editorial change has been made in the clause for fixed-price contracts, in § 13.502 (h). Section 13.502 (h), as revised, reads as follows:

§ 13.502 *Government-furnished property clause for fixed-price contracts.*

* * *

(h) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government-furnished Property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government-furnished Property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

2. The Government Property Clause for cost-reimbursement type contracts, in paragraph (i) of § 13.503, has been revised so as to authorize the omission of inventory schedules for production scrap under certain conditions at the option of the contracting officer. See specifically paragraph (i) and the related text note. Section 13.503, as revised, reads as follows:

§ 13.503 *Government property clause for cost-reimbursement type contracts.* The following clause shall be used in cost-reimbursement type contracts for supplies and services (except contracts for experimental, developmental, or research work with educational or nonprofit institutions, where no profit to the contractor is contemplated) under which a Department is to furnish to the contractor, or the contractor is to acquire for the account of the Government, material, special tooling, or industrial facilities within the policy set forth in § 13.402 (a).

GOVERNMENT PROPERTY

(a) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished Property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished Property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished Property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished Property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished Property or delivery of such property in a condition not suitable for its intended use.

(b) Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred as as "Government Property."

(c) Title to the Government Property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government Property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall maintain adequate property control records of the Government Property and shall identify the Government Property as such in accordance with the requirements of the "Manual for Control of Government Property in Possession of Contractors" (Appendix B, Armed Services Procurement Regulation), as in effect on the date of the contract, which Manual is hereby incorporated by reference and made a part of this contract.

(d) The Government Property provided or furnished pursuant to the terms of this contract shall, unless otherwise provided herein, be used only for the performance of this contract.

(e) The Contractor shall maintain and administer in accordance with sound industrial practice, a program, for the maintenance, repair, protection and preservation of Government Property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government Property.

(f) (i) The Contractor shall not be liable for any loss of or damage to the Government Property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) (A) which results from wilful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or direction of (I) all or substantially all of the Contractor's business, or (II) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (III) a separate and complete major industrial operation in connection with the performance of this contract; or (B) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of its directors, officers, or other representatives mentioned in subparagraph (A) above, (I) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government Property as required by paragraph (e) hereof, or (II) to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (e) hereof; or (C) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule; or (D) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or (E) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement; provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. This clause shall not be construed as relieving a subcontractor from liability for loss or destruction of or damage to Government Property in its possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, may provide for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government Property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(ii) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government Property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(iii) Upon the happening of loss or destruction of or damage to the Government Property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of (A) the lost, destroyed and damaged Government Property, (B) the time and origin of the loss, destruction or damage, (C) all known interests in com-

mingled property of which the Government Property is a part, and (D) the insurance, if any, covering any part of or interest in such commingled property. The Contractor shall make repairs and renovations of the damaged Government Property or take such other action, as the Contracting Officer directs.

(iv) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government Property, it shall use the proceeds to repair, renovate or replace the Government Property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government Property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government Property for the benefit of the Government.

[1] (v) In the event any aircraft are to be furnished under this contract, any loss or destruction of, or damage to, such aircraft or other Government Property occurring in connection with operations of said aircraft will be governed by the clause of this contract captioned "Flight Risks," to the extent such clause is, by its terms, applicable.

(g) The Government shall at all reasonable times have access to the premises where any of the Government Property is located.

(h) The Government Property shall remain in the possession of the Contractor for such period of time as is required for the performance of this contract unless the Contracting Officer determines that the interests of the Government require removal of such property. In such case the Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of Government Property. In any such instance, the contract may be amended to accomplish an equitable adjustment in the terms and provisions thereof.

(i) Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) Unless otherwise provided herein, the Government shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the Contractor's plant or any portion thereof which is affected by the removal of any Government Property.

(k) Directions of the Contracting Officer and communications of the Contractor issued pursuant to this clause shall be in writing.

NOTE: As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from the Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

[1] For use where applicable.

SUBPART F—USE OF GOVERNMENT-OWNED INDUSTRIAL FACILITIES ON WORK OTHER THAN FOR A MILITARY DEPARTMENT

Section 13.601–2 has been revised to conform rental rates with those set forth in ODM Order VII–4, Amdt. No. 2, dated June 18, 1957 (22 F. R. 4417), which provides also that no exception to the rates shall be made without prior ODM approval. Rental rates are now keyed to the actual age of leased facilities, rather than to specific calendar years. Clarifying editorial changes have also been made. Section 13.601–2, as revised, reads as follows:

§ 13.601–2 *Rental.* * * *

§ 13.601–2 *Minimum rent.* Except as provided in § 13.601–3, rental charged under § 13.601 for personal property and equipment constituting industrial facilities shall conform to the following rates, which rates have been determined to be fair and reasonable:

(a) As to metalworking equipment of the types referred to in this subchapter, Appendix B, paragraph 401.2, or Appendix C, paragraph 307.2, rent shall be at the appropriate rate set forth below regardless of the extent and value of any obligations undertaken by the user to provide maintenance or other services.

Age of equipmet	*Monthly rental rate*
0 to 2 years	1¾% of acquisition cost.
Over 2 to 6 years	1½% of acquisition cost.
Over 6 to 10 years	1% of acquisition cost.
Over 10 years	¾% of acquisition cost.

The acquisition cost to be used in determining rental shall be the purchase price of the equipment charged the Government plus costs of transportation to, and installation in, the place where the equipment will be used under the contract or agreement, if such costs are borne by the Government. Transportation and installation costs may be estimated by the contracting officer where the actual costs are not known. When special tooling or accessories are rented with the equipment, equipment acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. If the purchase price is not available or cannot be obtained from the manufacturer of the equipment, the military departments shall obtain an estimated purchase price from the Office of the Assistant Secretary of Defense (Supply and Logistics). On January 1 following the date of manufacture of each item of equipment, such item shall be considered one year old, and on each succeeding January 1 it shall become one year older; and contracts or agreements shall so provide.

(b) As to personal property and equipment constituting industrial facilities other than metalworking equipment covered in paragraph (a) of this section, and with respect to which there are no prevailing commercial rates, a rent at the rate of not less than 1 percent per month of the original acquisition cost of such property or equipment shall be charged.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 15—CONTRACT COST PRINCIPLES

Sections 15.204 (x) and 15.603 have been added to provide for allowance as a contract cost, in cost-reimbursement type contracts, of allocable payments made to funds established by contractors in connection with supplemental unemployment benefit plans under specified conditions. Sections 15.204 (x) and 15.603 read as follows:

SUBPART B—SUPPLY AND RESEARCH CONTRACTS WITH COMMERCIAL ORGANIZATIONS

§ 15.204 *Examples of items of allowable costs.* * * *

(x) Vacation, holiday and severance pay, sick leave and military leave, to the extent required by law, by employer-employee agreement or by the contractor's established policy (with respect to supplemental unemployment benefit plans, see § 15.603).

SUBPART F—COST INTERPRETATIONS

§ 15.603 *Supplemental unemployment benefit plans.*

§ 15.603–1 *Applicability and effective date.* This cost interpretation pertains to § 15.204 (x). It is applicable with respect to all cost-reimbursement type contracts placed on and after 1 October 1957 and, also, to all existing cost-reimbursement type contracts not completed at that date except as to rates of overhead which have been finally agreed upon for particular periods. However, the foregoing sentence does not supersede any express agreement in writing that a different interpretation shall be applicable.

§ 15.603–2 *Conditions governing allowability.* Payments by contractors to funds established in connection with supplemental unemployment benefit plans shall be allowed as a contract cost when:

(a) made to an irrevocable fund or trust for the exclusive benefit of the contractor's employees as a result of an arm's length agreement between the employer and his employees;

(b) accepted by the Internal Revenue Service as deductible for Federal income tax purposes; and

(c) equitably allocated between defense and non-defense business at the plant or division level, whichever is lower, for which payments are calculated: *Provided*, The maximum funding has not been reached for such activity.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 16—PROCUREMENT FORMS

SUBPART C—PURCHASE AND DELIVERY ORDER FORMS

A revised § 16.303 adapts DD Form 1155 for use in procurements negotiated under 10 U. S. C. 2304 (a) (1), (see § 3.201–2 (b) (v)), in amounts of more than $1,000, but not more than $2,500. This has been accomplished by design of a signature page and a form for necessary additional contract clauses. To conform with a new numbering system, designations of the additional papers relating to DD Form 1155 have been changed. A comparison of the new and old numbering systems is as follows:

	Revised Form	*Old Form*
Basic Form	DD 1155	DD 1155
Continuation Sheet	DD 1155c	DD 1155–1
Supplemental Sheet (Signature Page)	DD 1155s	
Reverse side of Basic Form	DD 1155r	DD 1155–2 (Army) Reverse side of DD 1155 (Navy)

DD Form 1155, as revised, shall be used effective 2 January 1958, or when existing stocks of the replaced forms are exhausted, whichever date is earlier.

Section 16.303, as revised, reads as follows:

§ 16.303 *Order for supplies or services (DD Forms 1155, 1155r, 1155c, and 1155s).*

§ 16.303–1 *General.* (a) The following forms are prescribed for use in accordance with the conditions set forth in this § 16.303.

(1) DD Form 1155 (including its reverse side, 1155r), Order for Supplies or Services, provides in one document:

(i) A purchase order, delivery order under a contract, or delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher; and

(iv) A public voucher.

(2) DD Form 1155c, Continuation Sheet, provides additional Schedule space.

(3) DD Form 1155s, Additional General Provisions and Acceptance, used with DD Form 1155 in negotiated procurements of not more than $2,500, provides:

(i) Additional general provisions;

(ii) A block for the contracting officer to mark if the contractor's written acceptance is requested, and

(iii) A space for the contractor's signature when a written acceptance is requested.

(b) The foregoing forms may be used as snap-out manifold forms, as cut sheets, or as reproducible masters, as prescribed by Departmental procedures. DD Form 1155 is designed for mailing in window envelopes, and the use of such envelopes is encouraged.

§ 16.303–2 *Conditions for use*—(a) *General.* The foregoing forms shall be used, as appropriate, regardless of the number of deliveries or payments contemplated, except where utility services are procured under GSA area contracts as provided in Part 5, Subpart H, of this subchapter. When used as purchase orders these forms shall be used only for the purchase of supplies as defined in § 7.102, or for services other than personal services.

(b) *Use as a purchase order of not more than $1,000.* DD Form 1155 shall be used for all purchases of not more than $1,000 negotiated in accordance with Part 3 of this subchapter, provided:

(1) The procurement is unclassified; and

(2) Only the contract clauses set forth on the back of DD Form 1155 are to be used; if additional clauses covering the subject matter of any clause set forth in this subchapter are to be used, the procurement shall be effected by use of some other form authorized by this subchapter or military department procedures.

(c) *Use for negotiated purchases of not more than $2,500.* (1) DD Forms 1155 and 1155s may be used for all negotiated purchases of not more than $2,500, provided:

(i) The procurement is unclassified;

(ii) The public voucher feature of DD Form 1155 is not utilized in a procurement of more than $1,000, and

(iii) Only the contract clauses set forth on the back of DD Form 1155 and on DD Form 1155s are to be used; if additional clauses covering the subject matter of any clause set forth in this subchapter are to be used, the procurement shall be effected by use of some other form authorized by this subchapter or military department procedures.

(2) When DD Form 1155s is used, the contracting officer shall request contractor acceptance thereon if:

(i) The written acceptance of the contractor is necessary for the obligation of funds in accordance with Section 1311, Public Law 663, 83d Congress (31 U. S. C. 200). (When the purchase is for not more that $1,000 or is negotiated pursuant to 10 U. S. C. 2304 (a) (2) or (9), Section 1311 does not require a written acceptance); or

(ii) It is deemed to be in the best interest of the Government to consummate a binding contract between the parties before the contractor undertakes performance.

(d) *Use as a delivery order.* Except as to specialized procurements for which other instructions are given by this subchapter or military department procedures, DD Form 1155 shall be used without monetary limitation as a delivery order for ordering supplies and services:

(1) under indefinite delivery type contracts (see § 3.405–5), including such contracts made by Government agencies outside of the Department of Defense: *Provided*, (i) The order is issued in accordance with, and subject to the terms and conditions of, such contract, and (ii) the order refers to the particular contract involved; and

(2) from Government agencies outside the Department of Defense.

(e) *DD Form 1155c, Continuation Sheet.* DD Form 1155c, Continuation Sheet shall be used if additional Schedule space is required, unless otherwise provided by military department procedures.

SUBPART E—SPECIAL CONTRACTS AND ORDER FORMS

1. The word "continental" has been removed from the last sentence of § 16.502–1. Section 16.502–1, as revised, reads as follows:

§ 16.502 *Negotiated contract form for stevedoring services (DD Form 674).*

§ 16.502–1 *General.* DD Form 674 is a Schedule prescribed for use in the procurement of stevedoring services within the continental limits of the United States. Negotiated contracts for stevedoring services shall consist of DD Form 351 (Cover Page), DD Form 674 (Schedule Page—in lieu of DD Form 351–1), and DD Form 351–2 (Signature Page). (For DD Forms 351 and 351–2, see § 16.202.) When contracting for stevedoring services outside the United States, the provisions of the Schedule will be used as a guide only.

2. Section 16.503–1 has been revised to provide that the subject form will be used overseas as a guide only. Sections 16.503–1 and 16.503–2, as revised, read as follows:

§ 16.503 *Master contract for repair and alteration of vessels (DD Forms 731 and 731–1).*

§ 16.503–1 *General.* DD Form 731 is prescribed to establish in advance the terms upon which a contractor will effect repairs, alterations and additions to vessels under the provisions of job orders issued by contracting activities from time to time. The Master Contract (DD Form 731) shall be entered into with all prospective contractors located within the United States who request ship repair work and who possess the organization and facilities to perform such work satisfactorily. When using Master Contracts in work with prospective contractors located outside of the United States, DD Form 731 shall be used as a guide.

§ 16.503–2 *Inviting bids or quotations for job orders.* When a requirement arises for the type of work covered by the Master Contract within the United States, bids or quotations will be solicited from prospective contractors who have previously executed a Master Contract, and also from prospective contractors, who possess the necessary qualifications and agree to execute a Master Contract before issuance of a Job Order. Whenever a prospective contractor is invited to submit a bid or quotation, the contracting officer shall notify the prospective contractor in reasonable detail of (a) the nature of the work to be performed, (b) the date the vessel will be available, and (c) the date the work is to be completed. In the

event the prospective contractor is willing and able to perform the work, he shall be afforded an opportunity to inspect the work to be accomplished, and then he shall submit a bid or quotation for the performance of the work in accordance with the invitation for bids or request for quotations. If the contracting officer requests prospective contractors to negotiate, he shall also request a breakdown of the price quoted indicating the estimated cost of (1) direct labor, (2) material, (3) overhead, (4) any amount included for contingencies and profit, and (5) such other information as the contracting officer may consider necessary.

SUBPART G—CONTRACT TERMINATION FORMS

1. References to DD Forms in § 16.702–5 have been amended. Section 16.702–5, as revised, reads as follows:

§ 16.702–5 *Inventory schedules (DD Form 542, 543, 544, 545, and 832).* (a) The following forms are prescribed for use by contractors to support settlement proposals submitted on DD Forms 540, 541, or 547:

(1) DD Form 542 (Inventory Schedule A—Metals) and DD Form 542c (Continuation Sheet).

(2) DD Form 543 (Inventory Schedule B—Raw Materials) and DD Form 543c (Continuation Sheet).

(3) DD Form 544 (Inventory Schedule C—Work in Process) and DD Form 544c (Continuation Sheet).

(4) DD Form 545 (Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools) and DD Form 545c (Continuation Sheet).

In addition, the Inventory Schedule forms may be used for reporting inventory in connection with adjustments under the Changes clause and inventory excess to completed contracts.

(b) DD Form 832 (Termination Inventory Schedule E—Short Form) is prescribed for use by contractors to support settlement proposals submitted on DD Form 831.

2. Section 16.704, as revised, reads as follows:

§ 16.704 *Notice of audit status date (DD Form 547s).* DD Form 547s is prescribed for use by disbursing officers to fix the audit status date in accordance with § 8.511–3.

3. Section 16.706 has been added, as follows:

§ 16.706 *Instructions for use of termination forms.* DD Form 1114 consists of instructions for the use of contract termination settlement and inventory schedule forms.

SUBPART H—MISCELLANEOUS FORMS

Section 16.813 prescribes DD Form 1107 for use as a standardized format for the submission of cost data by contractors when required for the pricing of change orders. This form shall be used effective 1 January 1958, or when existing stocks of similar forms are exhausted, whichever date is earlier. Section 16.813, as revised, reads as follows:

§ 16.813 *Change order price analysis (DD Form 1107).*

§ 16.813–1 *General.* DD Form 1107 (Change Order Price Analysis) provides a standard format for the submission of cost data by contractors when such data are required for the pricing of change orders under fixed-price or for cost-reimbursement type contracts. Contractor reproduction of the form is authorized.

§ 16.813–2 *Conditions for use.* The contracting officer shall request the contractor to submit data required for the pricing of change orders on DD Form 1107, except where the contractor and the contracting officer have agreed otherwise.

§ 16.813–3 *Forms superseded.* This Form supersedes Departmental forms currently used solely for this purpose effective when existing stocks of Departmental forms are exhausted or 1 January 1958, whichever is earlier.

(R. S. 161, sec. 2202, 70A Stat. 120; 5 U. S. C. 22, 10 U. S. C. 2202. Interpret or apply secs. 2301–2314, 70A Stat. 127–133; 10 U. S. C. 2301–2314)

PART 30—APPENDIXES TO ARMED SERVICES PROCUREMENT REGULATIONS

Paragraph 401.1 of § 30.2, Appendix B, and paragraph 209.1 of § 30.3, Appendix C, have been amended so as to provide for a return to the system of marking in effect before 1953. Plant equipment, special tooling, etc., will now bear the designation of the military department responsible for funding and control of such property. Provision is also made for removal of marking in the event of sale, scrapping, or transfer to another military department.

§ 30.2 *Appendix B—Manual for Control of Government Property in Possession of Contractors.*

* * * * *

PART IV—MISCELLANEOUS PROVISIONS

401. *Identification and commodity classification—marking*

401.1 *Identification.* All Government Property shall be recorded and identified as such by the Contractor promptly upon receipt, and it shall remain so identified so long as it remains in the custody, control or possession of the Cnotractor.

(a) *Extent of identification.*

(i) As a general rule, all Government material shall be identified as Government Property except in those cases where—

(A) No materials of the same type at the same location are owned by the Contractor, his employees, or other contracting agencies.

(B) Adequate physical control is maintained over tool-crib items, guard force items, protective clothing and other items issued for use by individuals in the performance of their work under the contract.

(C) Property is of bulk type or by its general nature of packing or handling precludes adequate marking, as may be determined by the Property Administrator.

(D) Where property is commingled, as authorized by paragraph 206 hereof.

(ii) Government-owned special tooling shall be marked with the designation of the military department responsible for funding and control of such tooling, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF", unless it is determined that such marking will damage the special tooling or is otherwise impracticable. Marking and identification procedures may be expanded by the Department having cognizance over the tooling to include end item reference, drawing number, and such other information as may be desired in a given case.

(iii) Unless already marked in accordance with these instructions, all Government-owned plant equipment, including industrial reserve plant equipment, shall be marked by the Contractor with an identification number, except when the size of the equipment or the nature of the material from which it is made makes it impracticable. When for the above reasons an item of plant equipment cannot be marked with an identification number, it will be assigned an identification number for record purposes, which number shall be shown on the plant equipment property record. Once an identification number has been affixed to an item of plant equipment, the identification will be permanent and will not be changed so long as the equipment remains under the control of the Department of Defense. Identification shall be effected by affixing a metal, fibre, plastic or other plate directly to the equipment; by using indelible ink, acid or electric etch, steel dies, or any other legible, permanent, conspicuous, and tamperproof method. Identification shall consist of the following markings:

(A) An indication of Government-ownership and of the military department responsible for funding and control of the plant equipment, as follows: Army—"USA"; Navy—"USN"; and Air Force—"USAF";

(B) A two-part identification number, furnished by the Government, consisting solely of numerals except as provided in (C) below. The first part shall be the property account number, and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a military department, no change shall be made in the markings, except as provided in (iv) below.

(C) In the case of items included within a standard departmental registration system, for example, automotive, construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant department, which number shall be used in lieu of any other identification number.

(iv) Identification markings shall be removed prior to sale, scrapping, or transfer of funding and control responsibilities to other military department. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer, new identification markings, in accordance with the requirements of (ii) or (iii) above, shall be affixed upon receipt of the equipment by the receiving military department.

(b) *Recording identification numbers.* Assigned property identification numbers will be recorded on all applicable receiving documents, shipping documents, and other documents pertaining to the property accounts.

§ 30.3 *Appendix C—Manual for control of Government property in possession of non-profit research and development contractors.*

* * * * *

209. *Identification and commodity classification—marking.*

209.1 *Identification.*

(a) Government property shall be recorded and identified by the contractor promptly upon receipt as provided in the contract. Marking identification shall be as follows:

(i) An indication of Government ownership and of the military department responsible for funding and control of the plant equipment, as follows: Army—"USA", Navy—"USN", and Air Force—"USAF";

(ii) With respect to plant equipment, a two-part identification number furnished by the Government, consisting solely of numerals except as provided in (iii) below. The

first part shall be the property account number; and the second part shall be a serial number. In case plant equipment furnished by the Government is already identified as property of a military department, no change shall be made in the markings, except as provided in (c) below.

(iii) In the case of items included within standard departmental registration system, for example, automotive construction, or weight-handling equipment, application for a proper registration number will be made to the cognizant department, which number shall be used in lieu of any other identification number.

(b) Assigned property identification numbers shall be recorded on applicable property records.

(c) Identification markings shall be removed prior to sale, scrapping, or transfer of funding and control responsibilities to another military department. The markings so removed shall be shown on the appropriate documents involved. In the case of a transfer, new identification markings, in accordance with the requirements of (a) above, shall be affixed upon receipt of the equipment by the receiving military department.

ALBERT FREGOSI,
Colonel, U. S. Army, Acting Director for Procurement Policy, Office of the Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 57-10799; Filed, Dec. 30, 1957; 8:47 a. m.]

TITLE 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

Subchapter B—Bureau of the Public Debt

[Department Circular 530, Eighth Revision]

PART 315—UNITED STATES SAVINGS BONDS

Pursuant to section 22 of the Second Liberty Bond Act, as amended (49 Stat. 21, as amended; 31 U. S. C. 757c), Department Circular No. 530, Seventh Revision, dated May 21, 1952 (31 CFR Part 315), as amended, is hereby further amended and issued as an Eighth Revision effective January 1, 1958, to read as follows:

Subpart A—General Information

Sec.
315.0 Applicability of regulations.
315.1 Official agencies.
315.2 Definition of terms as used in the regulations in this part.

Subpart B—Registration

315.5 General.
315.6 Restrictions.
315.7 Authorized forms of registration.
315.8 Unauthorized registration.

Subpart C—Limitations on Holdings

315.10 Amount which may be held.
315.11 Computation of amount.
315.12 Disposition of excess.

Subpart D—Limitation of Transfer or Pledge

315.15 Limitation on transfer or pledge.
315.16 Pledge under Department Circulars Nos. 154 and 657.

Subpart E—Limitation on Judicial Proceedings; No Stoppage or Caveats Permitted

315.20 General.
315.21 Payment to judgment creditors.
315.22 Payment or reissue pursuant to judgment.
315.23 Evidence necessary.

Subpart F—Lost, Stolen, Mutilated, Defaced, or Destroyed Bonds

315.25 Relief in case of loss, etc., after receipt by owner.
315.26 Relief in case of nonreceipt.

Subpart G—Interest

315.30 General.
315.31 Appreciation bonds.
315.32 Current income bonds.

Subpart H—General Provisions for Payment and Redemption

315.35 Provisions applicable both before and after maturity.
315.36 Before maturity.
315.37 At or after maturity.
315.38 Requests for payment.
315.39 Certifying officers.
315.40 General instructions to certifying officers.
315.41 Interested person not to certify.
315.42 Presentation and surrender.
315.43 Partial redemption.
315.44 Nonreceipt or loss of checks issued in payment.

Subpart I—Reissue and Denominational Exchange

315.45 General.
315.46 Requests for reissue.
315.47 Effective date.
315.48 Correction of errors.
315.49 Change of name.

Subpart J—Minors and Persons Under Other Legal Disability, and Absentees

315.50 Payment to representative of the estate.
315.51 Payment to minors.
315.52 Payment to a parent or other person on behalf of a minor.
315.53 Payment or reinvestment upon request of voluntary guardian of incompetent.
315.54 Reissue.

Subpart K—A Natural Person as Sole Owner

315.55 Payment.
315.56 Reissue for certain purposes.

Subpart L—Two Natural Persons as Coowners

315.60 During the lives of both coowners.
315.61 After the death of one or both coowners.
315.62 Upon death of both coowners in a common disaster, etc.

Subpart M—Two Natural Persons as Owner and Beneficiary

315.65 During the lifetime of the registered owner.
315.66 After the death of the registered owner.

Subpart N—Deceased Owners

315.70 Payment or reissue on death of owner.

Subpart O—Fiduciaries

315.75 Payment.
315.76 Reissue.
315.77 Requests for reissue or payment prior to maturity.
315.78 Requests for payment at or after maturity.

Subpart P—Payment or Reissue of Bonds Registered in the Names of Private Organizations (Corporations, Associations, Partnerships, etc.) and Governmental Agencies, Units and Officers

315.80 Payment to corporations or unincorporated associations.
315.81 Payment to partnerships.
315.82 Reissue or payment to successors of corporations, unincorporated associations or partnerships.
315.83 Reissue or payment on dissolution of corporation or partnership.
315.84 Payment to institutions (churches, hospitals, homes, schools, etc.).
315.85 Reissue in name of trustee or agent for investment purposes.
315.86 Reissue upon termination of investment agency.
315.87 Payment to governmental agencies and units.
315.88 Payment to Government officers.

Subpart Q—Further Provisions

315.90 Regulations prescribed.
315.91 Waiver of regulations.
315.92 Additional evidence; bond of indemnity.
315.93 Preservation of rights.
315.94 Supplements, amendments, or revisions.

AUTHORITY: §§ 315.1 to 315.94 issued under sec. 22, 49 Stat. 21, as amended; 31 U. S. C. 757c.

SUBPART A—GENERAL INFORMATION

§ 315.0 *Applicability of regulations.* The regulations in this part apply generally to all United States Savings Bonds of all series of whatever designation, bearing any issue dates whatever, except as otherwise specifically provided herein.

§ 315.1 *Official agencies.* The Bureau of the Public Debt of the Treasury Department is charged with matters relating to United States Savings Bonds. Transactions in savings bonds after original issue are largely conducted by the Bureau of the Public Debt, Division of Loans and Currency Branch, 536 South Clark Street, Chicago 5, Illinois, the Federal Reserve Banks and Branches, as fiscal agents of the United States, and the Treasurer of the United States, Treasury Department, Washington 25, D. C. Correspondence in regard to any such transactions and requests for appropriate forms should be addressed to the office in Chicago or the Federal Reserve Bank of the district in which the correspondent is located or the Treasurer of the United States, except that any specific instructions given elsewhere in this part for addressing correspondence regarding particular transactions should be observed. Notices or documents not filed in accordance with instructions in the regulations in this part will not be recognized. The Federal Reserve Banks and Branches are located in the cities indicated by their names, as follows:

Federal Reserve Bank of Boston.

Federal Reserve Bank of New York: Buffalo Branch.

Federal Reserve Bank of Philadelphia.

Federal Reserve Bank of Cleveland: Cincinnati Branch, Pittsburgh Branch.

Federal Reserve Bank of Richmond: Baltimore Branch, Charlotte Branch.

Federal Reserve Bank of Atlanta: Birmingham Branch, Jacksonville Branch, Nashville Branch, New Orleans Branch.

Federal Reserve Bank of Chicago: Detroit Branch.

Federal Reserve Bank of St. Louis: Little Rock Branch, Louisville Branch, Memphis Branch.

Federal Reserve Bank of Minneapolis: Helena (Montana) Branch.

Federal Reserve Bank of Kansas City: Denver Branch, Oklahoma City Branch, Omaha Branch.

Federal Reserve Bank of Dallas: El Paso Branch, Houston Branch, San Antonio Branch.

Federal Reserve Bank of San Francisco: Los Angeles Branch, Portland (Oregon) Branch, Salt Lake City Branch, Seattle Branch.

§ 315.2 *Definition of terms as used in the regulations in this part.* (a) "An incompetent" means any person who is under legal disability for reasons other than minority and includes individuals whose estates have been placed under the administration of a guardian or custodian because of the age, physical disability, or wishes of the individual.

(b) "Authorized issuing agent" means an incorporated bank, trust company, savings bank, federal savings and loan association, instrumentality of the United States or other organization qualified as an issuing agent under the provisions of Department Circular No. 657, as amended and supplemented (Part 317 of this Chapter).

(c) "Authorized paying agent" means an incorporated bank, trust company, savings bank, savings and loan association, or other organization qualified as a paying agent under the provisions of Department Circular No. 750, Revised (Part 321 of this chapter).

(d) "Court" means a court which has jurisdiction over the parties and subject matter.

(e) "Federal Reserve Bank" includes any Branch of a Federal Reserve Bank.

(f) "Extended maturity date" means the date of expiration of any period (hereinafter called "optional extension period") after the "maturity date" during which the owner has the option of retaining bonds at further interest under the provisions of the Department circular offering them for sale.[1]

(g) "Extended maturity value" means the value of a bond at the end of the optional extension period.

(h) "Maturity date" means the date on which the bond will mature by the terms of the Department circular offering it for sale without regard to any optional extension period.

(i) "Maturity value" and "face value" of a bond are used interchangeably unless otherwise indicated. They refer to the value of a bond on its maturity date.

(j) "Payment" and "redemption" are used interchangeably, unless otherwise indicated. They refer to the payment of a savings bond in accordance with the governing regulations.

(k) "Personal trust estate" means a trust estate established by natural persons in their own right, for the benefit of themselves or other such natural persons, in whole or in part, and common trust funds comprised in whole or in part of such trust estates.

(l) "Presented and surrendered" and "presentation and surrender" mean the actual receipt of the bond, with an appropriate request for the particular transaction, by the Bureau of the Public Debt, Chicago office or Washington office, the Treasurer of the United States, or a Federal Reserve Bank, or, if the transaction is one which an authorized paying agent may handle, receipt by such authorized paying agent.

(m) "Representative of a minor's estate," "representative of an incompetent's estate," or "representative of an absentee's estate" means a guardian, conservator, or similar representative of the estate of a minor, incompetent, or absentee appointed by court or otherwise legally qualified, regardless of the title by which designated. These terms do not refer to a voluntary or natural guardian, such as a parent, including a parent to whom custody of a child has been awarded through divorce proceedings or a parent by adoption, or to the executor or administrator of the estate of a decedent.

(n) "Reissue" means the cancellation and retirement of a bond and the issue of a new bond or bonds of the same series, amount (maturity value) (or the remainder thereof in case of partial redemption), and issue date.

[1] Bonds of Series E bearing issue dates prior to May 1, 1957, have an optional extension period. Bonds of other series do not have this feature.

SUBPART B—REGISTRATION

§ 315.5 *General.* United States Savings Bonds are issued only in registered form. The form of registration used must express the actual ownership of and interest in the bond and, except as otherwise specifically provided in Subpart E and § 315.48 of Subpart I of this part, will be considered as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or a coowner, nor any restriction on the right of the owner or a coowner to receive payment of the bond or interest, other than as provided in these regulations, may be made in the registration or otherwise. In order to avoid difficulty when redemption or reissue is requested or in collecting interest on current income bonds, and for the protection of the persons intended to be designated as owners, coowners, or beneficiaries, it is very important that requests for registration be clear, accurate and complete, that the registration conform with one of the forms set forth in this subpart, and that the registration of all securities owned by the same person, organization or fiduciary estate be uniform. The post office address should include, where appropriate, the street and number, postal zone, and route or any other local feature. The owner, coowner or beneficiary should be designated by the name by which he is ordinarily known or the one under which he does business, including preferably at least one full given name. The name should be preceded by any applicable title, such as "Dr." or "Rev.," or followed by "M. D.," "D. D." or other similar designation. The designation "Sr." or "Jr." should be used whenever applicable. The name of a woman should be preceded by "Miss" or "Mrs." unless some other applicable title or designation is used. A married woman's own given name, not that of her husband, should be used, for example, "Mrs. Mary A. Jones," not "Mrs. Frank B. Jones."

§ 315.6 *Restrictions*—(a) *Restrictions as to residence.* The registration of savings bonds is restricted on original issue, but not on authorized reissue, to include only persons (whether natural persons or others) who are:

(1) Residents of the United States, its territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone;

(2) Citizens of the United States temporarily residing abroad;

(3) Civilian employees of the United States or members of its Armed Forces, regardless of their residence or citizenship; and

(4) Other natural persons as coowners with, or beneficiaries on death of, natural persons of any of the above classes;

except that the registration of savings bonds, whether on original issue or reissue, is not authorized in any form to include the name of any alien who is a resident of any area with respect to which the Treasury Department restricts or regulates the delivery of checks drawn against funds of the United States or any agency or instrumentality thereof.[2]

(b) *Restrictions as to minority or incompetency.* (1) Bonds purchased by another person with funds belonging to a minor should be registered in the name of the minor without a coowner or beneficiary. If there is a representative of the minor's estate, the bonds should be registered in the name of the minor, or in the name or names of all such representatives, followed in either case by an appropriate reference to the guardianship. Bonds purchased by a representative of two or more minors, even though appointed in a single proceeding, should be registered in a form to show each guardianship estate separately. If a bond is purchased as a gift to a minor and either the donor or the minor resides in a State which by statute authorizes the donor to designate an adult as custodian for the minor, the bond may be registered as provided in the statute if such registration includes a clear reference to the statute. If no reference to the statute is included in the registration set forth in the statute a parenthetical reference identifying the statute must be added. A father or mother, as such, or as natural guardian, is not considered a representative for purposes of registration. See examples of forms of registration under § 315.7 (b). A minor, whether or not under legal guardianship, may be named as owner, coowner, or beneficiary on bonds purchased by another person with that person's own funds. A minor may name a coowner or beneficiary on bonds purchased by him from his wages, earnings, or other funds belonging to him and under his control.

(2) Bonds should not be registered in the name of an incompetent, unless there is a legal representative of his estate, except under the provisions of § 315.53. If there is a legal representative the provisions of the preceding paragraph, as to registration in the name of the legal representative or in the name of the incompetent followed by reference to the guardianship, apply.

§ 315.7 *Authorized forms of registration.* Subject to any limitations or restrictions contained in these regulations on the right of any person to be named as owner, coowner, or beneficiary, savings

[2] See Department Circular No. 655, as amended (31 CFR 211).

bonds may be registered in the following forms:[1]

(a) *Natural persons.* In the names of natural persons in their own right.

(1) *Single owner.* Example:

"John A. Jones."

(2) *Coownership form—two persons (only).* In the alternative as coowners. Example:

"John A. Jones or Mrs. Ella S. Jones."

No other form of registration establishing coownership is authorized.

(3) *Beneficiary form—two persons (only).* Examples:

"John A. Jones payable on death to Mrs. Ella S. Jones;"

"John A. Jones P. O. D. Mrs. Ella S. Jones."

"Payable on death" may be abbreviated to "P. O. D." as indicated in the last example. The first named person is hereinafter referred to as the owner and the second named person as the beneficiary.

(b) *Fiduciaries and private or public organizations.* Only the single owner form of registration is available for bonds owned by other than natural persons, and the registration used must conform to the forms authorized in this paragraph.

(1) *Fiduciaries.* In the name of any persons or organizations, public or private, as fiduciaries, except where the fiduciary would hold the bonds merely or principally as security for the performance of a duty, obligation or service.

(i) *Guardians, custodians, conservators, etc.* In the name and title of the legally appointed, designated or authorized representative or representatives of the estate of a minor, incompetent, aged, absentee, etc., or in the name of a minor, incompetent, or absentee, followed by an appropriate reference to the guardianship. The registration should show the nature of the incompetency or refer to the statute authorizing the appointment of the representative. If the statute requires particular wording, as in most gift to minors statutes, the wording required by the statute should be used. Examples:

"William C. Jones, guardian (or conservator, trustee, etc.) of the estate of James F. Brown, a minor (or an incompetent, aged, infirm, or absentee)."

"John Smith, a minor (or incompetent, aged, infirm, or absentee), under legal guardianship (or conservatorship or trusteeship, etc.) of Henry C. Smith."

"John Smith, under legal guardianship of Henry Smith pursuant to Sec. 670.5, Code of Iowa 1950."

"John Smith, a minor (or incompetent) under custodianship by designation of the Veterans Administration."

"John Smith, an incompetent for whom Henry C. Smith has been designated trustee by the Department of the Army pursuant to 37 U. S. C. 351–354."

"William C. Jones, as custodian for John Smith, a minor, under the California Gifts of Securities to Minors Act."

"William C. Jones, as custodian for John Smith, a minor, under the laws of the State of Georgia (Chapter 48–3, Ga. Code Anno.)."

(ii) *Executors, administrators, etc.* (*a*) In the name of the representative or representatives of the estate of a decedent appointed by a court or otherwise legally qualified. The registration should include the name of the decedent and the name or names of all representatives. The name and title of the representative must be followed by adequate identifying reference to the estate. Example:

"John Smith, executor of the will (or administrator of the estate) of Henry J. Smith, deceased."

(*b*) In the name of an executor authorized to administer a trust under the terms of a will although he is not named as trustee. Example:

"John Smith, executor of the will of Henry J. Smith, deceased, in trust for Mrs. Jane Smith, with remainder over."

(iii) *Trustees.* In the name and title (or title alone where hereinafter provided) of the trustee or trustees of a single duly constituted trust estate (which will be considered as an entity), substantially in accordance with the examples set forth in this subparagraph. Unless otherwise indicated, an adequate identifying reference should be made to the trust instrument or other authority creating the trust. A common trust fund established and maintained according to law by a financial institution duly authorized to act as a fiduciary will be considered as a single duly constituted trust estate within the meaning of the regulations in this part.

(*a*) *Will, deed of trust, agreement, or similar instrument.* Examples:

"John Smith and the First National Bank, trustees under the will of Henry J. Smith, deceased."

"The Second National Bank, trustee under an agreement with George E. White, dated February 1, 1935."

If the authority creating the trust designates by title only an officer of a board or an organization as trustee, only the title of the officer should be used in the registration. Example:

"Chairman, Board of Trustees, First Church of Christ, Scientist, of Chicago, Illinois, in trust under the will of Henry J. Smith, deceased."

If the trustees are too numerous to be designated in the inscription by names and title, the names or some of the names may be omitted. Examples:

"John Smith, Henry Jones, et al., trustees under the will of Henry J. Smith, deceased."

"Trustees under the will of Henry J. Smith, deceased."

(*b*) *Pension, retirement or similar fund, or Employees' savings plan.* In the name and title (or title alone) of the trustee or trustees of a pension, retirement or similar fund, or an employees' savings plan. If the instrument creating the trust provides that the trustees shall serve for a limited term, the names of the trustees may be omitted. Examples:

"First National Bank and Trust Company, trustee of the Employees' Savings Plan of Jones Company, Inc., U/A dated ----------, 195--."

"Trustees of the Employees' Savings Plan of Johnson Company, Inc., U/A dated ----------, 195--."

"First National Bank, trustee of pension fund of Industrial Manufacturing Company, under agreement with said company dated March 31, 1949."

"Trustees of Retirement Fund of Industrial Manufacturing Company, under resolution adopted by its board of directors on March 31, 1949."

(*c*) *Funds of a lodge, church, society, or similar organization.* If the funds of a lodge, church, society, or similar organization, whether incorporated or not, are held in trust by a trustee or trustees or a board of trustees, only the title should be used in the registration. Examples:

"Trustees of the First Baptist Church, Akron, Ohio, acting as a Board under Section 15 of its by-laws."

"Trustees of Jamestown Lodge No. 1,000 Benevolent and Protective Order of Elks, under Section 10 of its by-laws."

"Board of Trustees of the Lotus Club, Washington, Indiana, under Article X of its constitution."

(*d*) *Public officers, corporations, or bodies.* If a public officer, public corporation, or public body acts as trustee under express authority of law, only the title should be used in the registration. Examples:

"Sinking Fund Commission, trustee of State Highway Certificates of Indebtedness Sinking Fund, under Section 5972, Code of South Carolina."

"Warden, Illinois State Penitentiary, Joliet Branch, Trustee of Inmates' Amusement Fund, under Chapter 23, Sections 34a and 34b, Illinois Revised Statutes, 1941."

(*e*) *School, class, or activity fund.* If the principal or other officer of a public, private, or parochial school acts as trustee for the benefit of the student body or a class, group, or activity thereof, only the title should be used in the registration, and if the amount purchased for any one fund does not exceed $500 (maturity value), no reference need be made to a trust instrument. Examples:

"Principal, Western High School, in trust for Class of 1955 Library Fund."

"Director of Athletics, Western High School, in trust for Student Activities Association under resolution adopted May 12, 1955."

(iv) *Life tenants.* In the name of a life tenant, followed by adequate identifying reference to the instrument creating the life tenancy. Example:

"Mrs. Jane Smith, life tenant under the will of Henry J. Smith, deceased."

(v) *Investment agents.* In the name of a bank, trust company, or other financial institution, or individual, holding funds of a religious, educational, charitable, or nonprofit organization, whether or not incorporated, as agent under an agreement with the organization for the sole purpose of investing and reinvesting the funds and paying the income to the organization. The name and designation of the agent should be followed by an adequate identifying reference to the agreement. Examples:

"Black County National Bank, fiscal agent, under agreement with the Evangelical Lu-

[1] Any question as to the correct form of registration should be promptly submitted to the Federal Reserve Bank of the district or the Bureau of the Public Debt, Division of Loans and Currency, 536 South Clark Street, Chicago 5, Illinois.

theran Church of The Holy Trinity, dated December 28, 1949."

"First National Bank and Trust Company, investment agent, under agreement with Central City Post No. 1000, Department of Illinois, American Legion."

(2) *Private organizations (corporations, associations, and partnerships, etc.).* In the name of any private organization, but not in the names of commercial banks, which are defined for this purpose as those accepting demand deposits. The full legal name of the organization, without mention of any officer or member by name or title, should be used, as follows:

(i) *A corporation.* A business, fraternal, religious, or other private corporation, followed preferably by the words "a corporation" (unless the fact of incorporation is shown in the name). Examples:

"Smith Manufacturing Company, a corporation."

"Jones and Brown, Inc."

(ii) *An unincorporated association.* An unincorporated lodge, society, or similar self-governing association, followed preferably by the words "an unincorporated association." The term "an unincorporated association" should not be used to describe a trust fund, a board of trustees, a partnership, or a business conducted under a trade name or as a sole proprietorship. If the association is chartered by or affiliated with a parent organization, the name or designation of the subordinate or local organization should be given first, followed by the name of the parent organization. The name of the parent or national organization may be placed in parentheses and, if it is well known, may be abbreviated. Examples:

"The Lotus Club, an unincorporated association."

"Local 447, Brotherhood of Railroad Trainmen, an unincorporated association."

"Eureka Lodge No. 817 (A. F. & A. M.), an unincorporated association."

(iii) *A partnership.* A partnership (which will be considered as an entity), followed by the words "a partnership." Examples:

"Smith and Brown, a partnership."

"Acme Novelty Company, a partnership."

(iv) *Institutions (churches, hospitals, homes, schools, etc.).* In the name of a church, hospital, home, school, or similar institution conducted by a private organization or by private trustees, regardless of the manner in which it is organized or governed or title to its property is held. Examples:

"Shriners' Hospital for Crippled Children, St. Louis, Missouri."

"St. Mary's Roman Catholic Church, Albany, New York."

"Rodeph Shalom Sunday School, Philadelphia, Pennsylvania."

(3) *Governmental units, agencies, and officers.* In the full legal name or title of the owner or official custodian of public funds, other than trust funds, as follows:

(i) Any governmental unit, as a state, county, city, town, village, or school district. Examples:

"State of Maine."

"Town of Rye, New York (Street Improvement Fund)."

(ii) Any board, commission, government owned corporation, or other public body duly constituted by law. Example:

"Maryland State Highway Commission."

(iii) Any public officer designated by title only. Example:

"Treasurer, City of Chicago."

(c) *Treasurer of the United States as coowner or beneficiary.* Those who desire to do so may make gifts to the United States by designating the Treasurer of the United States as coowner or beneficiary. Bonds so registered may not be reissued to change the designation. Examples:

"John A. Jones or the Treasurer of the United States of America."

"John A. Jones P. O. D. the Treasurer of the United States of America."

§ 315.8 *Unauthorized registration.* A savings bond inscribed in a form not substantially in agreement with one of those authorized by this subpart will not be considered as validly issued, except that once it is established that the bond can be reissued in a form of registration which is valid under these regulations it will be considered as having been validly issued from the date of original issue.

SUBPART C—LIMITATIONS ON HOLDINGS

§ 315.10 *Amount which may be held.* The amounts of savings bonds of each series, issued in any one calendar year, which may be held by any one person at any one time, computed in accordance with the provisions of § 315.11, are limited as follows: [4]

(a) *Series E.* $5,000 (maturity value) for each calendar year up to and including the calendar year 1947; $10,000 (maturity value) for the calendar years 1948 to 1951, inclusive; $20,000 (maturity value) for the calendar years 1952 to 1956, inclusive; $10,000 (maturity value) for the calendar year 1957 [5] and each calendar year thereafter; except that trustees of an employees' savings plan (as defined in § 316.8 of Department Circular No. 653, Fourth Revision, as amended) may purchase $2,000 (maturity value) multiplied by the highest number of employees participating in the plan at any time during the calendar year in which the bonds are issued.

(b) *Series H.* $20,000 (maturity value) for each calendar year up to and including the calendar year 1956, and $10,000 (maturity value) for the calendar year 1957 [5] and each calendar year thereafter.

§ 315.11 *Computation of amount.*—(a) *Definition of "person".* The term "person" for purposes of this section shall mean any legal entity and shall include but not be limited to natural persons, corporations (public or private), partnerships, unincorporated associations, and trust estates. The holdings of each person individually and his holdings in any fiduciary capacity authorized by the regulations in this part, such as, for example, his holdings as a guardian of the estate of a minor, as a life tenant, or as trustee under a will or deed of trust, shall be computed separately. A pension or retirement fund or an investment, insurance, annuity or similar fund or trust will be regarded as an entity regardless of the number of beneficiaries or the manner in which their respective interests are established or determined. Segregation of individual shares as a matter of bookkeeping or as a result of individual agreements with beneficiaries or the express designation of individual shares as separate trusts will not operate to constitute separate trusts under the regulations in this part.

(b) *Bonds that must be included in computation.* Except as provided in paragraph (c) of this section, there must be taken into account in computing the holdings of each person:

(1) All bonds registered in the name of that person alone;

(2) All bonds registered in the name of the representative of the estate of that person;

(3) All bonds originally registered in the name of that person as coowner or reissued at the request of the original owner to add the name of that person as coowner or to designate him as coowner instead of as beneficiary. However, the amount of bonds of Series E and H held in coownership form may be applied to the holdings of either of the coowners but will not be applied to both, or the amount may be apportioned between them.

(c) *Bonds that may be excluded from computation.* There need not be taken into account:

(1) Bonds on which that person is named beneficiary;

(2) Bonds in which his interest is only that of a beneficiary under a trust;

(3) Bonds to which he has become entitled under § 315.66 as surviving beneficiary upon the death of the registered owner, as an heir or legatee of the deceased owner, or by virtue of the termination of a trust or the happening of any other event;

(4) Bonds of Series E purchased with the proceeds of matured bonds of Series A, Series C–1938, and Series D, where such matured bonds were presented for that purpose;

(5) Bonds of Series E bearing issue dates from March 1, 1941, to December 1, 1945, inclusive, held by individuals in their own right which are not more than

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[4] Bonds of Series F, G, J, and K, which are no longer available for purchase, are subject to the limitations on holdings and rules for computation of holdings set forth in §§ 315.8 and 315.9 of Department Circular No. 530, Seventh Revision.

[5] Effective May 1, 1957. Accordingly investors who purchased $20,000 (maturity value) of bonds of Series E bearing issue dates of January 1 through April 1 were not entitled to purchase additional bonds of that series during 1957. The same limitation applies to bonds of Series H bearing those issue dates. Investors who purchased less than $10,000 (maturity value) of bonds of either series prior to May 1 were entitled only to purchase enough of either series to bring their total for that series for 1957 to $10,000 (maturity value).

$5,000 (maturity value) in excess of the prescribed limit;

(6) Bonds of Series E or Series H reissued under § 315.60 (b) (1);

(7) Bonds of Series E or Series H reissued in the name of a trustee of a personal trust estate which did not represent excess holdings prior to such reissue.

§ 315.12 *Disposition of excess.* If any person at any time acquires savings bonds issued during any one calendar year in excess of the prescribed amount, the excess must be immediately surrendered for refund of the purchase price, less (in the case of current income bonds) any interest which may have been paid thereon, or for such other adjustment as may be possible. For good cause found the Secretary of the Treasury may permit excess holdings to stand in any particular case or class of cases.

SUBPART D—LIMITATION ON TRANSFER OR PLEDGE

§ 315.15 *Limitation on transfer or pledge.* Savings bonds are not transferable and are payable only to the owners named thereon, except as specifically provided in the regulations in this part and then only in the manner and to the extent so provided. A savings bond may not be hypothecated, pledged as collateral, or used as security for the performance of an obligation, except as provided in § 315.16.

§ 315.16 *Pledge under Department Circulars Nos. 154 and 657.* A savings bond may be pledged by the registered owner in lieu of surety under the provisions of Department Circular No. 154, Revised, if the bond approving officer is the Secretary of the Treasury, in which case an irrevocable power of attorney shall be executed authorizing the Secretary of the Treasury to request payment. A savings bond may also be deposited as security with a Federal Reserve Bank under the provisions of Department Circular No. 657, as amended and supplemented, by an institution certified under that circular as an issuing agent for savings bonds of Series E.

SUBPART E—LIMITATION ON JUDICIAL PROCEEDINGS; NO STOPPAGE OR CAVEATS PERMITTED

§ 315.20 *General.* (a) No judicial determination will be recognized which would give effect to an attempted voluntary transfer inter vivos of a bond or would defeat or impair the rights of survivorship conferred by these regulations upon a surviving coowner or beneficiary, and all other provisions of this subpart are subject to this restriction. Otherwise, a claim against an owner or coowner of a savings bond and conflicting claims as to ownership of, or interest in, such bond as between coowners or between the registered owner and beneficiary will be recognized, when established by valid judicial proceedings, upon presentation and surrender of the bond, but only as specifically provided in this subpart.

(b) Neither the Treasury Department nor any agency for the issue, reissue, or redemption of savings bonds will accept notices of adverse claims or of pending judicial proceedings or undertake to protect the interests of litigants who do not have possession of a bond.

§ 315.21 *Payment to judgment creditors.*—(a) *Creditors.* Payment (but not reissue) of a savings bond registered in single ownership, coownership, or beneficiary form will be made to the purchaser at a sale under a levy or to the officer authorized to levy upon the property of the registered owner or coowner under appropriate process to satisfy a money judgment. Payment will be made to such purchaser or officer only to the extent necessary to satisfy the judgment and will be limited to the redemption value current sixty days after the termination of judicial proceedings or current at the time the bond is received, whichever is smaller. Payment of a bond registered in coownership form pursuant to a judgment or levy against only one of the coowners will be limited to the extent of that coowner's interest in the bond; this interest may be established by an agreement between the coowners or by a judgment, decree, or order of court entered in a proceeding to which both coowners are parties.

(b) *Trustees in bankruptcy and receivers.* Payment of a savings bond will be made to a trustee in bankruptcy, a receiver of an insolvent's estate, a receiver in equity, or a similar officer of the court, under the applicable provisions of paragraph (a) of this section, except that payment will be made at the redemption value current on the date of payment.

§ 315.22 *Payment or reissue pursuant to judgment*—(a) *Divorce.* A decree of divorce ratifying or confirming a property settlement agreement or otherwise settling the respective interests of the parties in a bond will not be regarded as a proceeding giving effect to an attempted voluntary transfer under the provisions of § 315.20. Consequently, reissue of a savings bond may be made to eliminate the name of one spouse as owner, coowner or beneficiary, or to substitute the name of one spouse for that of the other as owner, coowner or beneficiary pursuant to such a decree. The evidence required under § 315.23 must be submitted in any case. In cases where the decree does not set out the terms of the property settlement agreement a certified copy of the agreement must also be submitted, and in any case where the bonds are presently registered with a person other than one of the spouses as owner or coowner there must be submitted either a request for the reissue by such person or a judgment, decree, or order of court entered in a proceeding to which he was a party, determining the extent of the interest in the bond held by the spouse whose name is to be eliminated, and reissue will be permitted only to the extent of the spouse's interest in the bonds. Payment rather than reissue will be made if requested.

(b) *Gifts causa mortis.* A bond belonging solely to one person will be paid or reissued on the request of the person found by a court to be entitled thereto by reason of a gift causa mortis by the sole owner.

(c) *Date for determining rights.* For the purpose of determining whether or not reissue shall be made under this section pursuant to judicial proceedings, the rights of all parties involved shall be those existing under the regulations in this part at the time of the entry of the final judgment, decree, or order.

§ 315.23 *Evidence necessary.* To establish the validity of judicial proceedings, there must be submitted certified copies of a final judgment, decree, or order of court and of any necessary supplementary proceedings. If the judgment, decree, or order of court was rendered more than six months prior to the presentation of the bond, there must also be submitted a certificate from the clerk of the court, under its seal, dated within six months of the presentation of the bond showing that the judgment, decree, or order of court is in full force. A request for payment by a trustee in bankruptcy must be supported by duly certified evidence of his appointment and qualification. A request for payment by a receiver of an insolvent's estate must be supported by a copy of the order appointing him, certified by the clerk of the court, under its seal, as being in full force on a date not more than six months prior to the date of the presentation of the bond. A request for payment by a receiver in equity or a similar officer of the court, other than a receiver of an insolvent's estate, must be supported by a copy of an order authorizing him to present the bond for redemption, certified by the clerk of the court, under its seal, as being in full force on a date not more than six months prior to the presentation of the bond.

SUBPART F—LOST, STOLEN, MUTILATED, DEFACED, OR DESTROYED BONDS

§ 315.25 *Relief in case of loss, etc., after receipt by owner.* Relief either by the issue of a substitute bond marked "DUPLICATE" or by payment may be given in case of the loss, theft, destruction, mutilation, or defacement of a savings bond after receipt by the owner or his representative. Such relief will be granted only after compliance with the provisions of this section, and in cases of loss or theft relief will not ordinarily be granted until six months after the date of receipt by the Treasury Department of the notice of such loss or theft.*

(a) *Procedure to be followed in applying for relief.* In any such case immediate notice of the facts, together with a complete description of the bond (including series, year of issue, serial number, and name and address of the registered owner or coowners) should be given to the Bureau of the Public Debt, Division of Loans and Currency Branch, 536 South Clark Street, Chicago 5, Illinois. That office will furnish the proper application form and instructions. In case of mutilation or defacement, all available fragments of the bond in any form whatsoever should be submitted.

* See Sec. 8, 50 Stat. 481, as amended (31 U. S. C. 738a).

In all cases the bond must be identified and the applicant must submit satisfactory evidence of loss, theft, or destruction or a satisfactory explanation of the mutilation or defacement.

The application must be made by the person or persons (including both coowners, if living) authorized under the regulations in this part to request payment of the bond, except as follows:

(1) If the bond is in beneficiary form and the owner and beneficiary are both living, both will ordinarily be required to join in the application.

(2) If a minor who is not of sufficient competency and understanding to request payment on his own behalf is named as owner, coowner, or beneficiary, both parents will ordinarily be required to join in the application.

(b) *Bond of indemnity.* The Treasury Department reserves the right to require a bond of indemnity, in accordance with Sec. 8 (b), 50 Stat. 481, as amended (31 U. S. C. 738a).

(c) *Recovery of savings bonds reported lost, stolen, or destroyed.* If a bond reported lost, stolen, or destroyed is recovered before relief is granted, the Bureau of the Public Debt, Division of Loans and Currency Branch, should be notified promptly. If the original bond is recovered after relief is granted, it should be surrendered promptly to the same office for cancellation.

§ 315.26 *Relief in case of nonreceipt.* If a savings bond, on original issue or on reissue, is not received from the issuing agent or agency by the registered owner or other person to whom delivery of the bond was directed, the issuing agent or agency should be notified as promptly as possible and given all the information available about the transaction. If necessary, appropriate instructions and forms will then be furnished.

SUBPART G—INTEREST

§ 315.30 *General.* United States Savings Bonds are issued in one of two forms: (a) Appreciation bonds, issued on a discount basis and redeemable before maturity at increasing fixed redemption values; and (b) current income bonds, issued at par, bearing interest payable semiannually[7] and redeemable before maturity at par or at fixed redemption values less than par.[8] The Department circular offering bonds of a particular series to the public designates the form in which bonds of that series will be available.

§ 315.31 *Appreciation bonds.* Savings bonds issued on a discount basis increase in redemption value at the end of the first year or half-year from issue date and at the end of each successive half-year period thereafter until their maturity date, when the full face amount becomes payable.[9] Bonds of Series E bearing issue dates from May 1, 1941, through April 1, 1957, will continue to increase in redemption value after maturity for ten years in accordance with the provisions of Sec. 316.13 of Department Circular No. 653, Fourth Revision, dated April 22, 1957.[10] The increment in value on appreciation bonds is payable only on redemption of the bonds, whether before, at, or after maturity.

§ 315.32 *Current income bonds*—(a) *Interest rates.* The interest payable on a current income bond is fixed by the provisions of the Department circular offering the particular series of bonds to the public.[11]

(b) *Method of interest payments.* Interest due on a current income bond is payable semiannually beginning six months from its issue date and will be paid on each interest payment date by check drawn to the order of the person or persons in whose names the bond is inscribed, in the same form as their names appear in the inscription on the bond, and mailed to the address of record (that given for the delivery of interest checks in the application for purchase or the request for reissue or, if no instruction is given as to the delivery of interest checks, the address given for the owner or the first-named coowner), except that:

(1) In the case of a bond registered in the form "A payable on death to B" the check will be drawn to the order of "A" alone until the Bureau of the Public Debt, Division of Loans and Currency Branch, receives notice of A's death (see paragraph (c) of this section), from which time the payment of interest will be suspended until the bond is presented for payment or reissue. Interest so withheld will be paid to the person found to be entitled to the bond.

(2) Upon receipt of notice of the death of the coowner to whom interest is being mailed (see paragraph (c) of this section), payment of interest will be suspended until a request for change of address is received from the other coowner, if living, or, if not, until satisfactory evidence is submitted as to who is authorized to endorse and collect such checks on behalf of the estate of the last deceased coowner in accordance with the provisions of Subpart N.

(3) Upon receipt of notice of the death of the owner of a bond (see paragraph (c) of this section), payment of interest on the bond will be suspended until satisfactory evidence is submitted as to who is authorized to endorse and collect such checks on behalf of the estate of the decedent, in accordance with the provisions of Subpart N.

(4) Whenever practicable the accounts for all current income bonds of the same series, with the same inscription, on which interest is payable on the same dates, will be consolidated and a single check will be issued on each interest payment date for interest on all such bonds. The check inscription may vary from the inscriptions on the bonds in cases of very long inscriptions or where there is lack of uniformity in the inscriptions on the bonds.

(5) The interest due at maturity will be paid with the principal and in the same manner. However, if the registered owner of a bond in beneficiary form dies on or after the due date without having presented and surrendered the bond for payment or authorized reissue, and is survived by the beneficiary, the interest will be paid to the legal representative of or the person entitled to the registered owner's estate. To obtain such payment, the bonds with a request therefor by the beneficiary should be submitted together with the evidence required in § 315.70.

(c) *Notice affecting interest check delivery.* A notice which would affect the delivery of an interest check will be acted upon as rapidly as possible, but if the notice is not received at least one month before an interest payment date, no assurance can be given that action can be taken in time to change or suspend the mailing of the interest due on that date. Such notice should be sent to the Bureau of the Public Debt, Division of Loans and Currency Branch, 536 South Clark Street, Chicago 5, Illinois.

(d) *Change of address.* (1) An owner or coowner of current income bonds should promptly notify the Bureau of the Public Debt, Division of Loans and Currency Branch (see paragraph (c) of this section), of any change in the address for delivery of interest checks.

(2) A notice of change of address given on behalf of a minor or incompetent owner or coowner under the conditions and in accordance with the provisions of Subpart J relating to the payment of bonds belonging to a minor or incompetent ordinarily will be accepted.

(3) Each bond should be described in the notice by issue date, serial number, series (including year of issue), and inscription appearing on the face of the bond. The bonds should not be submitted.

(e) *Representative appointed for the estate of a minor, incompetent, absentee, etc.* Interest on current income bonds will be paid to the representative ap-

[7] The final interest on bonds of Series H bearing issue dates prior to March 1, 1957, covers a period of two months, from 9½ years to maturity. Since May 1, 1957, the only current income savings bonds on sale are those of Series H.

[8] The sale of savings bonds of Series J and K was terminated at the close of business April 30, 1957. The terms of these bonds are set forth in Department Circular No. 906, as amended.

[9] Series E bonds issued on or before April 30, 1952, and Series F bonds, the sale of which was terminated April 30, 1952, increase in redemption value at the end of the first year from issue date; Series E bonds issued on and after May 1, 1952, and Series J bonds, the sale of which began on May 1, 1952, increase in redemption value at the end of the first half year from issue date. The last increase in redemption value of Series E bonds issued on or after May 1, 1952, prior to the start of the ten-year extension period, covers a period of two months, from 9½ years through 9 years and 8 months. The last increase in redemption value of Series E bonds issued on or after February 1, 1957, covers a period of five months, from 8½ years through 8 years and 11 months.

[10] See the Tables of Redemption Values at the end of that circular for extended maturity values, and footnote 5 on page 4 with respect to the extended maturity of bonds bearing issue dates of February 1 through April 1, 1957.

[11] See Department Circular No. 654, Third Revision, as amended, for Series G, Department Circular No. 905, Revised, for Series H, and Department Circular No. 906, as amended, for Series K.

pointed for the estate of the owner of such bonds who is a minor, incompetent, absentee, etc., in accordance with the provisions of § 315.50 relating to payment of the bonds. However, if the registration of the bonds does not include reference to the owner's status, they should be submitted (to the Bureau of the Public Debt, Division of Loans and Currency Branch, 536 South Clark Street, Chicago 5, Illinois, or a Federal Reserve Bank) for appropriate reissue so that interest checks may be properly drawn and delivered. They must be accompanied by the proof of appointment required by § 315.50.

(f) *No representative of an adult incompetent's estate appointed.* If an adult owner of a current income bond is mentally incompetent to endorse and collect the interest checks, if no other person is legally qualified to do so, and if the interest is needed for the support of the incompetent or that of a person legally dependent upon him for support, the relative responsible for his support, or some other person, may be recognized by the Treasury Department as voluntary guardian for the purpose of receiving, endorsing, and collecting the checks. Form PD 2513 should be used in making application for this purpose.

(g) *Reissue during interest period.* Physical reissue of a bond will be made as soon as practicable without regard to interest payment dates. If a current income bond is reissued between interest payment dates, interest for the entire period will ordinarily be paid on the next interest payment date, by check drawn to the order of the person in whose name the bond is reissued. However, if reissue is made during the month preceding an interest payment date, the interest due on the first day of the next month may in some cases be paid to the former owner or the representative of his estate.

(h) *Termination of interest.* Interest on current income bonds will cease at maturity or in case of redemption prior to maturity on the last day of the interest period immediately preceding the date of redemption, except that, if the date of redemption falls on an interest payment date, interest will cease on that date. For example, if a bond on which interest is payable on January 1 and July 1 is redeemed on September 1, interest will cease on the preceding July 1, and no adjustment of interest will be made for the period from July 1 to September 1. The same rules shall apply in case of partial redemption with respect to the amount redeemed.

(i) *Endorsement of checks.* Interest checks may be collected upon the endorsement of the payee or his authorized representative in accordance with the regulations governing the endorsement and payment of Government warrants and checks, which are contained in Department Circular No. 21 (Part 360 of this chapter). A form for the appointment of an attorney in fact for this purpose may be obtained from the Treasurer of the United States or from any Federal Reserve Bank. If no legal representative has been or will be appointed, the Bureau of the Public Debt, Division of Loans and Currency Branch, 536 South Clark Street, Chicago 5, Illinois, or a Federal Reserve Bank will furnish instructions upon request.

(j) *Nonreceipt or loss of check.* If an interest check is not received or is lost after receipt, the Regional Disbursing Office, U. S. Treasury Department, 536 South Clark Street, Chicago 5, Illinois, should be notified of the facts and should be given information concerning the amount, number, and inscription of the bonds, as well as a description of the check, if possible.

SUBPART H—GENERAL PROVISIONS FOR PAYMENT AND REDEMPTION

§ 315.35 *Provisions applicable both before and after maturity.* Payment of a savings bond will be made to the person or persons entitled thereto under the provisions of the regulations in this part upon presentation of the bond with an appropriate request for payment. Such payment will be made without regard to any notice of adverse claims to a savings bond and no stoppage or caveat against payment in accordance with the registration of the bond will be entered.

§ 315.36 *Before maturity*—(a) *At option of owner.* Pursuant to its terms, a savings bond may not be called for redemption by the Secretary of the Treasury prior to maturity, but may be redeemed in whole or in part at the option of the owner prior to maturity, under the terms and conditions set forth in the offering circular for each series and in accordance with the provisions of the regulations in this part, following presentation and surrender as provided in this subpart.

(b) *Series E.* A bond of Series E will be redeemed at any time after two months from the issue date without advance notice, at the appropriate redemption value as shown in the revision of Department Circular No. 653 current at the time of redemption.

(c) *Series F, G, H, J, and K.* A bond of Series F, G, H, J, or K will be redeemed after six months from the issue date, on one month's notice in writing to the Bureau of the Public Debt, Division of Loans and Currency Branch, a Federal Reserve Bank, or the Treasurer of the United States, Washington 25, D. C. Such notice may be given separately or by presenting and surrendering the bond with a duly executed request for payment. Payment will be made as of the first day of the first month following by at least one full calendar month the date of receipt of notice. For example, if the notice is received on June 1, payment will be made as of July 1, but if notice is received between June 2 and July 1, inclusive, payment ordinarily will be made as of August 1. If notice is given separately, the bond must be presented and surrendered with a duly executed request for payment to the same agency to which the notice is given, not less than twenty days before the date on which payment is to be made. For example, if the notice is received on June 15, the bond should be received not later than July 12. (See § 315.32 (h) for provisions as to interest in case current income bonds are redeemed prior to maturity.) A bond of Series H will be redeemed at par. A bond of Series F, G, J, or K will be redeemed at the appropriate redemption value as shown in the table printed on the bond, except as provided in paragraph (d) of this section.

(d) *Series G and K: Redemption at par.* (1) A bond of Series G or K issued in exchange for matured bonds of Series E under the provisions of Department Circulars Nos. 885 and 906 is payable at par.

(2) A bond of Series G or K registered in the name of a natural person or persons in their own right will be paid at par upon the request of the person entitled to the bond upon the death of the owner or either coowner.

(3) A bond of Series G or K held by a trustee, life tenant, or other fiduciary (exclusive of trustees of a pension, retirement, investment, insurance, annuity or similar fund, or employees' savings plan) will be paid at par upon appropriate request upon the termination, in whole or in part, of a trust, life tenancy, or other fiduciary estate by reason of the death of a natural person, but in the case of partial termination, redemption at par will be made to the extent of not more than the pro rata portion of the trust or fiduciary estate so terminated. Bonds of Series G or K held by a financial institution in its name as trustee of its common trust fund will be paid at par upon the request of the fiduciary upon the termination, in whole or in part, of a participating trust by reason of the death of a natural person, to the extent of not more than the pro rata portion of the common trust fund so terminated.

The option to receive payment at par under paragraph (d) (2) and (3) of this section may be exercised by a signed request for payment or by express written notice, in either case specifying that redemption at par is desired. Payment may be postponed to the second interest payment date following the date of death, if so requested; otherwise, payment will be made in regular course. A death certificate or other acceptable evidence of death must be submitted. In no case of redemption at par before maturity under paragraph (d) (2) and (3) will interest be payable beyond the second interest payment date following the date of death.

(e) *Withdrawal of request for redemption.* An owner who has presented and surrendered a savings bond to the Treasury Department or a Federal Reserve Bank, or an authorized paying agent, for payment, with an appropriate request for payment, may withdraw such request if notice of intent to withdraw is given to and received by the same agency to which the bond was presented prior to the issuance of a check in payment by the Treasury Department or a Federal Reserve Bank, or payment by the authorized paying agent. Such request may be withdrawn under the same conditions by the executor or administrator of the estate of a deceased owner, or by the person or persons entitled to the bond under § 315.70 (d), or by the representative of the estate of a person under legal disability, unless the presentation and surrender of the bond has cut off the rights

of survivorship under the provisions of Subpart L or Subpart M.

§ 315.37 *At or after maturity.* Pursuant to its terms, a savings bond of any series will be paid at or after maturity at its full face or maturity value, and in no greater amount, except that bonds of Series E retained under an extended maturity option under the terms of Department Circular No. 653 (Part 316 of this chapter), current at the time of redemption, will be paid at the redemption values provided in that circular.[12]

§ 315.38 *Requests for payment*—(a) *Form and execution of requests.* A request for payment of a savings bond must be executed on the form appearing on the back of the bond unless (1) the bond is accepted by an authorized paying agent for payment or for presentation to a Federal Reserve Bank for payment without the owner's signature to the request for payment under the provisions of Department Circular No. 888, Revised, or (2) authority is given for the execution of a separate or detached request.

(b) *Date of request.* Ordinarily, requests executed more than six months before the date of receipt of a bond for payment will not be accepted; nor will a bond, ordinarily, be accepted for redemption more than three calendar months prior to the date redemption is requested under these regulations.

(c) *Identification and signature of owner.* Unless the bond is presented under the provisions of paragraph (a) of this section or § 315.42 (b), an owner in whose name the bond is inscribed or other person entitled to payment under the provisions of these regulations must appear before one of the officers authorized to certify requests for payment (see § 315.39), establish his identity, and in the presence of such officer sign the request for payment in ink, adding in the space provided the address to which the check issued in payment is to be mailed. A signature made by mark (X) must be witnessed by at least one disinterested person in addition to the certifying officer and must be attested by endorsement in the blank space, substantially as follows: "Witness to the above signature by mark," followed by the signature and address of the witness. If the name of the owner or other person entitled to payment as it appears in the registration or in evidence on file in the Bureau of the Public Debt, Division of Loans and Currency Branch, has been changed by marriage or in any other legal manner, the signature to the request for payment should show both names and the manner in which the change was made, for example, "Miss Mary T. Jones, now by marriage Mrs. Mary T. Jones Smith (Mrs. Mary T. J. Smith, or Mrs. Mary T. Smith)," or "John Doe, now by court order Richard Roe." In case of a change of name other than by marriage, the request should be supported by satisfactory evidence of the change. No request signed in behalf of the owner or person entitled to payment by an agent or a person acting under a power of attorney will be recognized by the Treasury Department, except as provided in § 315.16, when pledged in lieu of surety under Department Circular No. 154.

(d) *Certification of request.* After the request for payment has been signed by the owner, the certifying officer should complete and sign the certificate following the request for payment, and the bond should then be presented and surrendered as provided in § 315.42 (a).

§ 315.39 *Certifying officers.* The following officers are authorized to certify requests for payment:

(a) *At United States post offices.* Any postmaster, acting postmaster, or inspector in charge or other post office official or clerk designated for that purpose. One or more of these officials will be found at every United States post office, classified branch, or station. A post office official or clerk other than a postmaster, acting postmaster, or inspector in charge should certify in the name of the postmaster or acting postmaster, followed by his own signature and official title, for example, "John Doe, postmaster, by Richard Roe, postal cashier." Signatures of these officers should be authenticated by a legible imprint of the post office dating stamp.

(b) *At banks, trust companies, and branches.* Any officer of any bank or trust company incorporated in the United States (including for this purpose its territories and possessions and the Commonwealth of Puerto Rico) or domestic or foreign branch of such bank or trust company; any officer of a Federal Reserve Bank, Federal Land Bank, and Federal Home Loan Bank; any employee of any such bank or trust company expressly authorized by the corporation for that purpose, who should sign over the title "Designated Employee"; and Federal Reserve Agents and Assistant Federal Reserve Agents located at the several Federal Reserve Banks. Certifications by any of these officers or designated employees should be authenticated by either a legible impression of the corporate seal of the bank or trust company or, in the case of banks or trust companies and their branches which are authorized issuing agents for bonds of Series E, by a legible imprint of the issuing agent's dating stamp.

(c) *Issuing agents not banks or trust companies.* Any officer of a corporation not a bank or trust company and of any other organization which is an authorized issuing agent for bonds of Series E. All certifications by such officers must be authenticated by a legible imprint of the issuing agent's dating stamp.

(d) *Commissioned and warrant officers of armed forces.* Commissioned and warrant officers of any of the armed forces of the United States, but only for members and the families of members of their respective services and civilian employees at Posts or Bases or Stations. Such certifying officer should indicate his rank and state that the person signing the request is one of the class whose request he is authorized to certify.

(e) *United States officials.* Judges, clerks, and deputy clerks of United States courts, including United States courts for the territories, possessions, the Commonwealth of Puerto Rico, and the Canal Zone; United States Commissioners; United States Attorneys; United States Collectors of Customs and their deputies; Regional Commissioners and District Directors of Internal Revenue and Internal Revenue agents; the officer in charge of any home, hospital, or other facility of the Veterans Administration, but only for patients and employees of such facilities; certain officers of Federal penal institutions designated for that purpose by the Secretary of the Treasury; certain officers of the United States Public Health Service Hospitals at Lexington, Kentucky, and Fort Worth, Texas, and of United States Marine Hospitals at Fort Stanton, New Mexico, and Carville, Louisiana, designated for that purpose by the Secretary of the Treasury (in each case, however, only for inmates or employees of the institution involved).

(f) *Officers authorized in particular localities.* Certain designated officers in the Treasury Department; the Governors and Treasurers of Hawaii, Puerto Rico, and Alaska; the Governor and Commisioner of Finance of the Virgin Islands; the Governor and Director of Finance of Guam; the Governor and Director of Administrative Services of American Samoa; the Governor, paymaster, or acting paymaster and collector or acting collector of the Panama Canal; and postmasters and acting postmasters in the Bureau of Posts of the Canal Zone.

(g) *In foreign countries.* In a foreign country requests for payment may be signed in the presence of and be certified by any United States diplomatic or consular representative, or the manager or other officer of a foreign branch of a bank or trust company incorporated in the United States whose signature is attested by an impression of the corporate seal or is certified to the Treasury Department. If such an officer is not available, requests for payment may be signed in the presence of and be certified by a notary or other officer authorized to administer oaths, but his official character and jurisdiction should be certified by a United States diplomatic or consular officer under seal of his office.

(h) *Special provisions.* In the event none of the officers authorized to certify requests for payment of savings bonds is readily accessible, the Commissioner of the Public Debt, the Deputy Commissioner of the Public Debt in Charge of the Chicago Office, or any Federal Reserve Bank is authorized to make special provision for any particular case.

§ 315.40 *General instructions to certifying officers.* Certifying officers should require positive identification of the person signing a request for payment and will be held fully responsible therefor. In all cases a certifying officer must affix to the certification his official signature, title, seal or dating stamp, address (if not shown in seal or stamp), and the date of execution. Officers of Veterans Administration Facilities, Pub-

[12] No extended maturity option for Series E bonds with issue dates after April 1, 1957, is provided in Department Circular No. 653, Fourth Revision, dated April 22, 1957.

lic Health Service Hospitals, Marine Hospitals, and Federal penal institutions should use the seal of the particular institution or service, where such seal is available. If a certifying officer other than a post office official, officer of a bank or trust company, or officer of an issuing agent does not possess an official seal, a statement to that effect should be added to the certification by such officer.

§ 315.41 *Interested person not to certify.* No person authorized to certify requests for payment may certify a request for payment of a bond of which he is the owner or in which he has an interest, either in his own right or in any representative capacity.

§ 315.42 *Presentation and surrender*—(a) *All series.* Except for cases coming within the provisions of paragraph (b) of this section, after the request for payment has been duly signed by the owner and certified as above provided the bond should be presented and surrendered to (1) a Federal Reserve Bank, (2) the Bureau of the Public Debt, Division of Loans and Currency Branch, or (3) the Treasurer of the United States, Washington 25, D. C. Usually payment will be expedited by surrender to a Federal Reserve Bank. In all cases presentation will be at the expense and risk of the owner. Payment will be made by check drawn to the order of the registered owner or other person entitled and mailed to the address given in the request for payment, or if no address is given in the request for payment, to the address given in the instructions accompanying the bond.

(b) *Optional procedure limited to bonds of Series A to E, inclusive, in names of individual owners or coowners only.* Notwithstanding the provisions of any Department circulars offering the bonds for sale and notwithstanding any instructions which may be printed on the bond, a natural person whose name is inscribed on the face of a bond of Series A, B, C, D, or E, either as owner or coowner in his own right, may present such bond for redemption (unless marked "duplicate") to an authorized paying agent. The owner or coowner must establish his identity to the satisfaction of the paying agent, sign the request for payment, and add his home or business address. Even though the request for payment has been signed, or signed and certified, before the presentation of the bond, the representative of the paying agent must be satisfied that the person presenting the bond for payment is the owner or coowner and may require him to sign the request for payment again. If the bond is in order for payment, the paying agent will make immediate payment at the appropriate redemption value without charge to the owner. This procedure is not applicable to partial redemption cases, or to deceased owner cases, or other cases in which documentary evidence is required.

§ 315.43 *Partial redemption.* A savings bond of any series in a denomination greater than $25 (maturity value) may be redeemed in part at current redemption value but only in amounts corresponding to authorized denominations, upon presentation and surrender of the bond in accordance with paragraph (a) of § 315.42. In any case in which partial redemption is authorized, before the request for payment is signed the phrase "to the extent of $__ (maturity value) and reissue of the remainder" should be added to the first sentence of the request. Upon partial redemption of the savings bond, the remainder will be reissued as of the original issue date, as provided in Subpart I. For payment of interest on current income bonds in case of partial redemption, see Subpart G.

§ 315.44 *Nonreceipt or loss of checks issued in payment.* In case a check in payment of a bond surrendered for redemption is not received within a reasonable time or in case such check is lost after receipt, notice should be given to the same agency to which the bond was surrendered for payment, accompanied by a description of the bond by series, denomination, serial number, and registration. The notice should state whether or not the check was received and should give the date upon which the bond was surrendered for payment. Instructions will be given as to the necessary procedure to obtain a duplicate. Payment of unmatured bonds of Series F, G, H, J, and K is ordinarily made on the first day of the first month following by at least one full calendar month the date of receipt of notice of intention to redeem, and a check should not be expected until that time.

SUBPART I—REISSUE AND DENOMINATIONAL EXCHANGE

§ 315.45 *General.* (a) Reissue of a savings bond may be made only under the conditions specified in these regulations. Reissue is not authorized solely for the purpose of effecting an exchange as between authorized denominations, but in case of authorized reissue the new bond or bonds may be issued in any authorized denomination or denominations. Consistent with other provisions of the regulations in this part, a savings bond may be reissued in a form of registration authorized by the regulations in effect on the original issue date or on the date of reissue.

(b) Reissue will not be made if the request therefor is received less than one full calendar month before the maturity date, except for bonds of Series E for which an optional extension period has been provided in Department Circular No. 653, Fourth Revision.[13] In the case of such bonds reissue will not be made if the request is received less than one full month before the extended maturity date. However, a request for reissue of a bond received prior to its maturity, or extended maturity date (in case of a bond for which an extended maturity period has been provided), will be effective to establish ownership as though the requested reissue had been made.

(c) A request for reissue of a bond received on or after its maturity, or extended maturity date (in case of a bond for which an extended maturity period has been provided), will not be effective to name a coowner or beneficiary or to promote a beneficiary to a coowner, but requests for reissue in the names of persons who have become entitled by operation of law will be recognized as establishing the right of those persons to receive payment.

(d) Reissues under the provisions of this subpart may be made only at (1) a Federal Reserve Bank, (2) the Bureau of Public Debt, Divisions of Loans and Currency Branch, or (3) the Office of the Treasurer of the United States, Washington 25, D. C.

§ 315.46 *Requests for reissue.* A request for reissue should be made on the prescribed form by the person authorized under these regulations to make such request. Appropriate forms may be obtained from any Federal Reserve Bank, the Office of the Treasurer of the United States, or from the Bureau of the Public Debt, Division of Loans and Currency Branch.

§ 315.47 *Effective date.* In any case of authorized reissue, the Treasury Department will treat the receipt by a Federal Reserve Bank or the Treasury Department of a bond and an appropriate request for reissue thereof as determining the date upon which the reissue is effective.

§ 315.48 *Correction of errors.* Reissue of a bond may be made to correct an error in the original issue, upon appropriate request supported by satisfactory proof of the error.

§ 315.49 *Change of name.* An owner, coowner, or beneficiary whose name is changed by marriage, divorce, annulment, order of court, or in any other legal manner after the issue of the bond may submit the bond with a request on Form PD 1474 for reissue to substitute the new name for the name inscribed on the bond. This action is recommended in case of a change of name of the owner or coowner of a current income bond. The signature to the request for reissue should show both names and the manner in which the change was made, as, for example, "John Doe, now by order of court Richard Roe" or "Miss Mary T. Jones, now by marriage Mrs. Mary T. Jones Smith (Mrs. Mary T. J. Smith or Mary T. Smith)." If the change of name was made other than by marriage, the request must be supported by satisfactory proof of the change.

SUBPART J—MINORS AND PERSONS UNDER OTHER LEGAL DISABILITY, AND ABSENTEES

§ 315.50 *Payment to representative of an estate.* If the form of registration of a savings bond indicates that the owner is a minor, an incompetent, or an absentee and there is a representative of his estate, payment will be made to such representative. The request for payment appearing on the back of the bond should be signed by the representative as such, for example, "John A. Jones, guardian (committee) of the estate of Henry W. Smith, a minor (an incompetent, an absentee)." Unless the form of registration gives the name of the representative requesting payment, a

[13] Only bonds of Series E with issue dates prior to May 1, 1957, have this optional extension period.

certificate or a certified copy of the letters of appointment from the court making the appointment, under the seal of the court, or other proof of qualification if not appointed by a court, should be submitted. Except in the case of corporate fiduciaries, such evidence should state that the appointment is in full force and should be dated not more than one year prior to presentation of the bond for payment. Where the form of registration does not indicate that there is a representative of the estate of a minor owner, a notice that there is such a representative will not be accepted by the Treasury Department for the purpose of preventing payment to the minor or to a parent or other person on behalf of the minor, as provided in §§ 315.51 and 315.52. However, if such representative presents for payment a bond registered in the name of his ward accompanied by proof of his qualification, payment will be made to such representative. (See Subpart N.)

§ 315.51 *Payment to minors.* If the owner of a savings bond is a minor and the form of registration does not indicate that there is a representative of his estate, payment will be made to him upon his request, provided that he is of sufficient competency to sign his name to the request for payment and to understand the nature of the transaction. In general, the fact that the request for payment has been signed by a minor and duly certified will be accepted as sufficient proof of competency and understanding.

§ 315.52 *Payment to a parent or other person on behalf of a minor.* If the owner of a savings bond is a minor and the form of registration does not indicate that there is a representative of his estate, and if such minor owner is not of sufficient competency to sign his name to the request for payment and to understand the nature of the transaction, payment will be made to either parent of the minor with whom he resides or, if the minor does not reside with either parent, then to the person who furnishes his chief support. His parent or the person furnishing his chief support should execute the request for payment and furnish a certificate, which may be typed or written on the back of the bond, as to his right to act for the minor. If a parent signs the request, the certificate and signature thereto should be in substantially the following form:

"I certify that I am the mother (or father) of John C. Jones and the person with whom he resides. He is _____ years of age and is not of sufficient competency and understanding to make this request.

"Mrs. Mary Jones on behalf of John C. Jones."

If a person other than a parent signs the request, the certificate and signature thereto, including a reference to the person's relationship, if any, to the minor, should be in substantially the following form:

"I certify that John C. Jones does not reside with either parent and that I furnish his chief support. He is ____ years of age and is not of sufficient competency and understanding to make this request.

"Mrs. Alice Brown, grandmother, on behalf of John C. Jones."

The Treasury Department may in any case require further proof that the minor is not of sufficient competency and understanding to execute the request for payment and of the right of the person executing the request to act on behalf of the minor.

§ 315.53 *Payment or reinvestment upon request of voluntary guardian of incompetent.* If the adult owner of a bond is mentally incompetent to request and receive payment thereof and no other person is legally qualified to do so, the relative responsible for his support or some other person may submit an application as voluntary guardian for redemption of the bond in the following cases:

(a) Where the proceeds of the bond are needed for the support of the incompetent or that of a person legally dependent upon him for support, and the total face amount of United States savings bonds belonging to the incompetent for which redemption is requested in any ninety-day period does not exceed $1,000;

(b) Where the bond has matured and it is desired to redeem it and reinvest the proceeds in United States Savings Bonds.

The entire proceeds must be invested, so far as possible, in bonds of Series E, except that:

(1) Any part of the proceeds which may not be invested therein because of the limitation on holdings may be invested in Series H bonds so long as the limitation on holdings for that series is not exceeded;

(2) If the matured bonds are current income bonds, the proceeds may be invested in Series H bonds so long as the limitation on holdings for that series is not exceeded.

The new bonds must be registered in the same form of registration as the matured bonds, with the words "an incompetent" following the incompetent's name, unless an owner, beneficiary, or coowner named in the registration of the matured bond is dead or unless such owner, beneficiary or coowner disclaims interest in the bond and consents to the elimination of his name. If the maturity value of the matured bond does not correspond to the purchase price of an authorized denomination of savings bonds of any series, or a multiple thereof, the odd amount remaining after the reinvestment will be paid to the voluntary guardian for the use and benefit of the incompetent. Form PD 2513 should be used in applying for payment under this section and should be accompanied by the evidence required by the instructions on the form.

§ 315.54 *Reissue.* A savings bond of which a minor or other person under legal disability is the owner or in which he has an interest may be reissued upon an authorized reissue transaction under the following conditions:

(1) Reissue will be restricted to a form of registration which does not adversely affect the existing ownership or interest of the minor or such other person, except that a minor of sufficient competency to sign his name to the request and to understand the nature of the transaction shall have the right to request reissue to add a coowner or beneficiary to a bond registered in his name alone or to which he is entitled in his own right.

(2) Requests for reissue under this section should be executed by the person authorized to request payment under §§ 315.50, 315.51, 315.52, and 315.53, and in the same manner.

SUBPART K—A NATURAL PERSON AS SOLE OWNER

§ 315.55 *Payment.* A savings bond registered in the name of a natural person in his own right, without a coowner or beneficiary, will be paid to him during his lifetime under Subpart H. Upon the death of the owner such bond will be considered as belonging to his estate and will be paid under Subpart N, except as otherwise provided in the regulations in this part.

§ 315.56 *Reissue for certain purposes.* A savings bond registered in the name of a natural person in his own right may be reissued upon appropriate request by him (subject to the provisions of § 315.54), upon presentation and surrender during his lifetime, for the following purposes:

(a) *Addition of a coowner or beneficiary.* To name another natural person as coowner or as beneficiary. Form PD 1787 should be used.

(b) *A trustee of a personal trust estate.* To name the trustee of a personal trust estate created by the owner. Form PD 1851 should be used.

(c) *Upon divorce or annulment.* To name as registered owner the other party to a divorce or annulment, occurring after issue of the bond. Form PD 1938 should be used.

(d) *Certain degrees of relationship.* To name as registered owner a person related to the owner in any of the degrees of relationship set forth in § 315.60 (b), (1) (i): *Provided, however,* That the Treasury reserves the right to reject any application for reissue hereunder as provided in that section. Form PD 1938 should be used.

SUBPART L—TWO NATURAL PERSONS AS COOWNERS

§ 315.60 *During the lives of both coowners.* A savings bond registered in coownership form, for example, "John A. Jones or Mrs. Mary C. Jones," will be paid or reissued during the lives of both, as follows:

(a) *Payment.* The bond will be paid to either upon his separate request, and upon payment to him the other shall cease to have any interest in the bond. If both request payment jointly, payment will be made by check drawn to their order jointly, for example, "John A. Jones AND Mrs. Mary C. Jones."

(b) *Reissue.* The bond may be reissued upon the request of both if presented and surrendered during the lifetime of both, as follows:

(1) In the name of either, alone or with a new coowner or beneficiary:

(i) If the coowner whose name is to remain on the bond and the coowner whose name is to be eliminated are re-

lated to each other as: husband and wife; parent and child (including stepchild); brother and sister (including the half blood, stepbrother and stepsister, and brother and sister through adoption); grandparent and grandchild; great grandparent and great grandchild; uncle or aunt and nephew or niece, including as nephew or niece the children of a brother or sister of the present spouse; granduncle or grandaunt and grandniece or grandnephew; mother-in-law or father-in-law and daughter-in-law or son-in-law; sister-in-law or brother-in-law;

Provided, however, That the Treasury reserves the right to reject any application for reissue hereunder, in whole or in part, upon a determination that the transaction would tend to evade or defeat the purposes of the limitation on holdings or the restriction against the transferability of savings bonds;

(ii) If one of them marries after the issue of the bond; and

(iii) If they are divorced or legally separated from each other, or their marriage is annulled, after the issue of the bond.

Form PD 1938 should be used to request reissue in any of the above three classes of cases.

The representative of the estate of a minor or incompetent coowner may request reissue under this paragraph on behalf of the ward to eliminate the other, but a request to eliminate the name of the minor or incompetent will not be recognized unless supported by evidence that a court has ordered the representative to request such reissue (see Sec. 315.23). When no representative has been appointed for a minor coowner who is not of sufficient competency to sign his name to the request for reissue and to understand the nature of the transaction, the person authorized to request payment for the minor under § 315.52 may sign the request for the minor, but only for reissue to promote the minor to sole owner. If no representative has been appointed for the estate of a minor coowner who is of sufficient competency to sign his name to the request for reissue and to understand the nature of the transaction, and if all of the bonds are to be reissued in his name alone or, if he so requests, with a new coowner or a beneficiary, he may sign the request. Reissue will not be made if one coowner is incompetent and a representative of the incompetent's estate has not been appointed, except to add the words "an incompetent" after his name or to eliminate the other coowner from the registration.

(2) In the name of a trustee of a personal trust estate created by both coowners. Requests for reissue should be made on Form PD 1851 and will not be approved unless both coowners are of full age and legally competent.

No other reissue will be permitted in any form during the lives of both coowners, except as specifically provided in the regulations in this part.

§ 315.61 *After the death of one or both coowners.* If either coowner dies without the bond having been presented and surrendered for payment or authorized reissue, the survivor will be recognized as the sole and absolute owner. Thereafter, payment or reissue will be made as though the bond were registered in the name of the survivor alone (see Subpart K), except that a request for reissue by him must be supported by proof of death of the other coowner, and except further that after the death of the survivor proof of death of both coowners and of the order in which they died will be required. The presentation and surrender of a bond by one coowner for payment establishes his right to receive the proceeds of the bond, and if he should die before the transaction is completed, payment will be made to the legal representative of, or persons entitled to, his estate in accordance with the provisions of Subpart N. If either coowner dies after the bond has been presented and surrendered for authorized reissue (see § 315.47), the bond will be regarded as though reissued during his lifetime.

§ 315.62 *Upon death of both coowners in a common disaster, etc.* If both coowners die under such conditions that it cannot be established either by presumption of law or otherwise which died first, the bond will be considered as belonging to the estates of both equally, and payment or reissue will be made accordingly. (See Subpart N.)

SUBPART M—TWO NATURAL PERSONS AS OWNER AND BENEFICIARY

§ 315.65 *During the lifetime of the registered owner.* A savings bond registered in beneficiary form, for example, "John A. Jones payable on death to Mrs. Mary C. Jones," will be paid or reissued upon presentation and surrender during the lifetime of the registered owner, as follows:

(a) *Payment.* The bond will be paid to the rigistered owner during his lifetime upon his properly executed request as though no beneficiary had been named in the registration. The presentation and surrender of the bond by the registered owner for payment establishes his exclusive right to the proceeds of the bond, and if he should die before the transaction is completed, payment will be made to the legal representative of, or the persons entitled to, his estate upon receipt of proof of the appointment and qualification of the representative or the identity of the persons entitled, in accordance with the provisions of Subpart N.

(b) *Reissue.* The bond will be reissued on the duly certified request of the registered owner:

(1) To name the beneficiary designated on the bond as coowner. Form PD 1787 should be used.

(2) To eliminate the beneficiary, to substitute another person as beneficiary, or to name another person as coowner, if the request of the registered owner is supported by the duly certified consent of the beneficiary to the elimination of his name or proof of the death of the beneficiary. Form PD 1787 should be used.[14]

(3) In the name of a trustee of a personal trust estate created by the owner, if the request of the owner is supported by the duly certified consent of the beneficiary to the elimination of his name or proof of the death of the beneficiary. Form PD 1851 should be used by the owner and Form PD 1849 by the beneficiary.[14]

If the registered owner dies after the bond has been presented and surrendered for authorized reissue, the bond will be regarded as though reissued during his lifetime.

§ 315.66 *After the death of the registered owner.* If the registered owner dies without the bond having been presented and surrendered for payment or authorized reissue and is survived by the beneficiary, upon proof of death of the owner the beneficiary will be recognized as the sole and absolute owner, and payment or reissue will be made as though the bond were registered in his name alone (see Subpart K).

SUBPART N—DECEASED OWNERS

§ 315.70 *Payment or reissue on death of owner*—(a) *General.* Upon the death of the owner of a savings bond who is not survived by a coowner or designated beneficiary and who had not during his lifetime presented and surrendered the bond for payment or an authorized reissue, the bond will be considered as belonging to his estate and will be paid or reissued accordingly as hereinafter provided, except that reissue under this subpart will not be permitted if otherwise in conflict with these regulations. In such exceptional case the person entitled to the bond will have the right only: (1) To hold the bond without change in registration; (2) to receive payment of the redemption value of the bond at any time and, if the bond is a current income bond, to receive the interest as it becomes due, but if the person entitled is an alien who is a resident of an area with respect to which the Treasury Department restricts or regulates the delivery of checks drawn against funds of the United States or any agency or instrumentality thereof, payment of the principal of and interest on the bond will not be made to such person until the restriction is removed. A creditor may obtain payment of a bond but not reissue. The provisions of this section shall also apply to savings bonds registered in the names of executors or administrators, except that proof of their appointment and qualification may not be required under (b) and (c).

(b) *In course of administration.* If the estate of a decedent is being administered in court, the bond will be paid to the duly qualified representative of the estate or will be reissued in the names of the persons entitled to share in the estate, upon the request of the representative

[14] The provisions of this subsection do not apply to bonds on which the Treasurer of the United States is named as beneficiary.

and compliance with the following requirements:

(1) Where there are two or more legal representatives, all must join in the request for payment or reissue, except as provided in §§ 315.77 and 315.78.

(2) The request for payment or reissue should be signed in the form, for example, "John A. Jones, administrator of the estate (or executor of the will) of Henry W. Jones, deceased," and must be supported by proof of the representative's authority in the form of a court certificate or a certified copy of the representative's letters of appointment. The certificate or the certification to the letters must be under seal of the court and, except in the case of a corporate representative, must contain a statement that the appointment is in full force and should be dated within six months of the date of presentation of the bond, unless the certificate or letters show that the appointment was made within one year immediately prior to such presentation.

(3) In case of reissue the legal representative of the estate should certify that each person in whose name reissue is requested is entitled to the extent specified for each and has consented to such reissue. A request for reissue by the legal representative should be made on Form PD 1455. If a person in whose name reissue is requested desires to name a coowner or beneficiary, such person should execute an additional request for that purpose, using Form PD 1787.

(c) *After settlement through court proceedings.* If the estate of the decedent has been settled in court, the bond will be paid to, or reissued in the name of, the person entitled thereto as determined by the court. The request for payment or reissue should be made by the person shown to be entitled, supported by a duly certified copy of the representative's final account as approved by the court, decree of distribution, or other pertinent court records, supplemented, if there are two or more persons having an apparent interest in the bond, by an agreement executed by them concerning the disposition of the bond. Form PD 1787 should be used.

(d) *Without administration.* When it appears that no legal representative of the decedent's estate has been or will be appointed, the bond will be paid to, or reissued in the name of, the person or persons entitled, including those entitled as donees of a gift causa mortis, pursuant to an agreement and request by all persons entitled to share in the decedent's estate. A short form of agreement for settlement without administration (Form PD 1946) may be used for cases in which the total amount of savings bonds (maturity value) and redemption and interest checks (face amount) relating to savings bonds which belong to the decedent's estate is not in excess of $500. A longer form (Form PD 1946–A) is prescribed for other cases of settlement without administration. Request for the appropriate form to be used hereunder may be made to any Federal Reserve Bank, the Office of the Treasurer of the United States, or to the Bureau of the Public Debt, Division of Loans and Currency Branch. If the persons entitled to share in the estate include minors or incompetents, payment or reissue of the bond will not be permitted without administration except to them or in their names unless their interests are otherwise protected to the satisfaction of the Treasury Department.

SUBPART O—FIDUCIARIES

§ 315.75 *Payment.* A savings bond registered in the name of a fiduciary or otherwise belonging to a fiduciary estate will be paid to the fiduciary or fiduciaries in accordance with the provisions of §§ 315.77 and 315.78.

§ 315.76 *Reissue*—(a) *In the name of person entitled*—(1) *Distribution of trust estate in kind.* A bond to which a beneficiary of a trust estate has become lawfully entitled in his own right or in a fiduciary capacity, in whole or in part, under the terms of a trust instrument, will be reissued in his name to the extent of his interest, upon the request of the trustee or trustees and their certification that such person is entitled and has agreed to reissue in his name.

(2) *After termination of trust estate.* If the person who would be lawfully entitled to a bond upon the termination of a trust does not desire to have distribution made to him in kind, as provided in subparagraph (1) of this paragraph, the trustee or trustees should present the bond for payment before the estate is terminated. If, however, the estate is terminated without such payment or reissue having been made, the bond will thereafter be paid to or reissued in the name of the person lawfully entitled upon his request and satisfactory proof of ownership, supplemented, if there are two or more persons having any apparent interest in the bond, by an agreement executed by all such persons concerning the disposition of the bond.

(3) *Upon termination of guardianship estate.* If the estate of a minor or incompetent or of an absentee is terminated, during the ward's lifetime, a bond registered to show that there is a representative of the estate will be reissued in the name of the former ward upon the representative's request and certification that the former ward is entitled and has agreed to reissue in his name (Form PD 1455 should be used), or will be paid to or reissued in the name of the former ward upon his own request, supported in either case by satisfactory evidence that his disability has been removed or that an absentee has returned to claim his property. Certification by the representative that a former minor has attained his majority, that a former incompetent has been legally restored to competency, that a legal disability of a female ward has been removed by marriage, if the state law so provides, or that an absentee has appeared to claim his property, will ordinarily be accepted as sufficient (see § 315.77 if the representative's name is not shown in the registration). Upon the termination of the estate as the result of the death of the ward, a bond registered to show that there is a representative of his estate will be reissued in accordance with the provisions of Subpart N as though it were registered in the name of the ward alone.

(4) *Upon termination of life estate.* Upon the death of a life tenant, a bond registered in his name as life tenant may be reissued in the name of the person or persons entitled pursuant to an agreement and request of all of the persons having an interest in the remainder.

(b) *In the name of a succeeding fiduciary.* If a fiduciary in whose name a bond is registered has been succeeded by another, the bond will be reissued in the name of the succeeding fiduciary upon appropriate request and satisfactory evidence of successorship. Form PD 1455 should be used.

(c) *In the name of financial institution as trustee of common trust fund.* A bond held by a bank, trust company, or other financial institution as a trustee, guardian or similar representative, executor or administrator may be reissued in its name as trustee of its common trust fund to the extent that participation therein by the institution in such capacity is authorized by law or applicable regulations. A request for reissue to the institution as trustee of its common trust fund should be executed on its behalf in the capacity in which the bond is held and by the cofiduciary, if any. Form PD 1455 should be used.

§ 315.77 *Requests for reissue or payment prior to maturity.* Except as specifically provided, the following rules apply to both requests for payment and reissue by fiduciaries. A request for reissue or for payment prior to maturity or extended maturity, for those Series E bonds for which an optional extension period has been provided,[18] must be signed by all acting fiduciaries unless by express statute, decree of court, or the terms of the instrument under which the fiduciaries are acting, some one or more of them may properly execute the request. If the fiduciaries named in the registration of the bond are still acting, no further evidence of authority will be required. In other cases a request must be supported by evidence as specified below:

(a) *Fiduciaries by title only.* If the bond is registered in the titles, without the names, of fiduciaries not acting as a board, satisfactory evidence of their incumbency must be furnished, except in the case of bonds registered in the title of public officers as trustees.

(b) *Succeeding fiduciaries.* If the fiduciaries in whose names the bond is registered have been succeeded by other fiduciaries, satisfactory evidence of successorship must be furnished.

(c) *Boards, committees, etc.* A savings bond registered in the name of a board, committee, commission, or other body, empowered to act as a unit and to hold title to the property of a religious, educational, charitable, or non-profit organization or public corporation will be paid upon a request for payment signed in the name of the board or other body by an authorized officer thereof. A request so signed and duly certified will ordinarily be accepted without further evidence of the officer's authority. The check in payment of the bond will be

drawn in the name of the board or other body as fiduciary for the organization named in the registration or shown by satisfactory evidence to be entitled as successor thereto.

(d) *Corporate fiduciaries.* If a public or private corporation or a political body, such as a state or county, is acting as a fiduciary, a request must be signed in the name of the corporation or other body in the fiduciary capacity in which it is acting, by an authorized officer thereof. A request so signed and duly certified will ordinarily be accepted without further evidence of the officer's authority.

(e) *Registration not disclosing trust or other fiduciary estate.* If the registration of the bond does not show that it belongs to a trust or other fiduciary estate or does not identify the estate to which it belongs, satisfactory evidence of ownership must be furnished in addition to any other evidence required by this section.

§ 315.78 *Requests for payment at or after maturity.* A request for payment at or after maturity or extended maturity for those Series E bonds for which an optional extension period has been provided,[13] signed by any one or more acting fiduciaries, will be accepted. Payment will ordinarily be made by check drawn as the bond is inscribed.

SUBPART P—PAYMENT OR REISSUE OF BONDS REGISTERED IN THE NAMES OF PRIVATE ORGANIZATIONS (CORPORATIONS, ASSOCIATIONS, PARTNERSHIPS, ETC.) AND GOVERNMENTAL AGENCIES, UNITS AND OFFICERS

§ 315.80 *Payment to corporations or unincorporated associations.* A savings bond registered in the name of a private corporation or an unincorporated association will be paid to the corporation or unincorporated association upon request for payment on its behalf by a duly authorized officer thereof. The signature to the request should be in the form, for example, "The Jones Coal Company, a corporation, by John Jones, President," or "The Lotus Club, an unincorporated association, by William A. Smith, Treasurer." A request for payment so signed and duly certified will ordinarily be accepted without further evidence of the officer's authority.

§ 315.81 *Payment to partnerships.* A savings bond registered in the name of an existing partnership will be paid upon a request for payment signed by a general partner. The signature to the request should be in the form, for example, "Smith and Jones, a partnership, by John Jones, a general partner." A request for payment so signed and duly certified will ordinarily be accepted as sufficient evidence that the partnership is still in existence and that the person signing the request is duly authorized.

§ 315.82 *Reissue or payment to successors of corporations, unincorporated associations, or partnerships.* A savings bond registered in the name of a private corporation, an unincorporated association, or a partnership which has been succeeded by another corporation, unincorporated association, or partnership by operation of law or otherwise, as the result of merger, consolidation, incorporation, reincorporation, conversion, or reorganization, or which has been lawfully succeeded in any manner whereby the business or activities of the original organization are continued without substantial change, will be paid to or reissued in the name of the succeeding organization upon appropriate request on its behalf, supported by satisfactory evidence of successorship. Form PD 1540 should be used.

§ 315.83 *Reissue or payment on dissolution of corporation or partnership.*— (a) *Corporations.* A savings bond registered in the name of a private corporation which is in the process of dissolution will be paid to the authorized representative of the corporation upon a duly executed request for payment, supported by satisfactory evidence of the representative's authority. Upon the termination of dissolution proceedings, the bond may be reissued in the names of those persons, other than creditors, entitled to the assets of the corporation, to the extent of their respective interests. Reissue under this subsection will be made upon the duly executed request of the authorized representative of the corporation and upon proof that all statutory provisions governing the dissolution of the corporation have been complied with and that the persons in whose names reissue is requested are entitled and have agreed to the reissue. If the dissolution proceedings are under the direction of a court, a certified copy of an order of the court, showing the authority of the representative to make the distribution requested, must be furnished.

(b) *Partnerships.* A savings bond registered in the name of a partnership which has been dissolved by death or withdrawal of a partner, or in any other manner, will be paid upon a request for payment by any partner or partners authorized by law to act on behalf of the dissolved partnership, or will be paid to or reissued in the names of the persons, other than creditors, entitled thereto as the result of such dissolution to the extent of their respective interests, upon their request supported by satisfactory evidence of their title, including proof that the debts of the partnership have been paid or properly provided for.

§ 315.84 *Payment to institutions (churches, hospitals, homes, schools, etc.).* A savings bond registered in the name of a church, hospital, home, school, or similar institution without reference in the registration to the manner in which it is organized or governed or to the manner in which title to its property is held will be paid upon a request for payment signed on behalf of such institution by an authorized representative. For the purpose of this section, a request for payment signed by a pastor of a church, superintendent of a hospital, president of a college, or by any official generally recognized as having authority to conduct the financial affairs of the particular institution will ordinarily be accepted without further proof of his authority. The signature to the request should be in the form, for example, "Shriners' Hospital for Crippled Children, St. Louis, Missouri, by William A. Smith, superintendent," or "St. Mary's Roman Catholic Church, Albany, New York, by John Jones, pastor."

§ 315.85 *Reissue in name of trustee or agent for investment purposes.* A savings bond registered in the name of a religious, educational, charitable or nonprofit organization, whether or not incorporated, may be reissued in the name of a bank, trust company or other financial institution, or an individual, as trustee or agent under an agreement with the organization under which the trustee or agent holds funds of the organization, in whole or in part, for the purpose of investing and reinvesting the principal and paying the income to the organization. Form PD 2177 should be used and should be signed on behalf of the organization by an authorized officer.

§ 315.86 *Reissue upon termination of investment agency.* A savings bond registered in the name of a bank, trust company, or other financial institution, or individual, as agent for investment purposes only, under an agreement with a religious, educational, charitable, or nonprofit organization, may be reissued in the name of the organization upon termination of the agency. The former agent should request such reissue and should certify that the organization is entitled by reason of the termination of the agency, using Form PD 1455. If such request and certification are not obtainable, the bond will be reissued in the name of the organization upon its own request, supported by satisfactory evidence of the termination of the agency.

§ 315.87 *Payment to governmental agencies and units.* A savings bond registered in the name of a State, county, city, town, or village, or in the name of a Federal, State, or local governmental agency such as a board, commission, or corporation, will be paid upon a request signed in the name of the governmental agency or unit by a duly authorized officer thereof. A request for payment so signed and duly certified will ordinarily be accepted without further proof of the officer's authority.

§ 315.88 *Payment to Government officers.* A savings bond registered in the official title of an officer of a governmental agency or unit will be paid upon a request for payment signed by the designated officer. The fact that the request for payment is so signed and duly certified will ordinarily be accepted as proof that the person signing is the incumbent of the designated office.

SUBPART Q—FURTHER PROVISIONS

§ 315.90 *Regulations prescribed.* The regulations in this part are prescribed by the Secretary of the Treasury as governing United States Savings Bonds issued under the authority of section 22 of the Second Liberty Bond Act, as amended, and pursuant to the various Department circulars offering such bonds for sale. The provisions of the regulations in this part with respect to bonds registered in the names of certain classes of individuals, fiduciaries, and organizations are equally applicable to bonds to which such individuals, fiduciaries, and organizations are otherwise shown to be entitled

under the regulations in this part. The provisions of Department Circular No. 300, Revised, have no application to savings bonds.

§ 315.91 *Waiver of regulations.* The Secretary of the Treasury reserves the right, in his discretion, to waive or modify any provision or provisions of the regulations in this part in any particular case or class of cases for the convenience of the United States or in order to relieve any person or persons of unnecessary hardship, if such action would not be inconsistent with law and would not impair any existing rights, and if he is satisfied that such action would not subject the United States to any substantial expense or liability.

§ 315.92 *Additional evidence; bond of indemnity.* The Secretary of the Treasury, in any case arising under the regulations in this part, may require such additional evidence as he may consider necessary or advisable, and may require a bond of indemnity, with or without surety, or an agreement of indemnity in any case where he may consider such a bond or agreement necessary for the protection of the interests of the United States.

§ 315.93 *Preservation of rights.* Nothing contained in the regulations in this part shall be construed to limit or restrict any existing rights which holders of savings bonds heretofore issued may have acquired under the circulars offering the bonds for sale or under the regulations in force at the time of purchase.

§ 315.94 *Supplements, amendments, or revisions.* The Secretary of the Treasury may at any time, or from time to time, prescribe additional, supplemental, amendatory, or revised rules and regulations governing United States Savings Bonds.

* * * * *

Compliance with the notice, public procedure, and effective date requirements of the Administrative Procedure Act (Pub. Law 404, 79th Cong.; 60 Stat. 237) is found to be impracticable and unnecessary with respect to this document. Nothing contained herein abridges or restricts any existing rights acquired by owners of savings bonds under previous circulars.

[SEAL] JULIAN B. BAIRD,
Acting Secretary of the Treasury.

[F. R. Doc. 57-10899; Filed, Dec. 30, 1957; 9:06 a. m.]

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Rules Amdt. 2-10]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

TABLE OF FREQUENCY ALLOCATIONS

The Commission having under consideration the desirability of making certain editorial changes in Part 2, § 2.104 (a) (5) of its rules and regulations; and

It appearing that an order adopted by the Commission on March 13, 1957, and printed in the FEDERAL REGISTER on March 19, 1957 (22 F. R. 1746), amended § 2.104 (a) (5) of Part 2 of the Commission's rules by reducing from 200 kc to 100 kc the separation betwen channels assignable to stations in the Aeronautical Mobile Service in the frequency band 123.7–131.9 Mc; and concurrently changed the footnote designator applicable to that band in the table of frequency allocations from (NG 50) to (NG 49); and

It further appearing that the abovementioned revision, Amendment No. 2–29 to Part 2 revised effective July 1, 1955, was not reflected in the subsequent recapitulative printing of Part 2 in the FEDERAL REGISTER on June 28, 1957 (22 F. R. 4533); and

It further appearing that the amendments adopted herein are editorial in nature, and, therefore, prior publication of notice of proposed rule making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendments may become effective immediately; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4 (i), (5) (d) (1) and 303 (r) of the Communications Act of 1934, as amended, and section 0.341 (a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This 23d day of December, 1957, that, effective December 30, 1957, § 2.104 (a) (5) is amended as set forth below.

Released: December 26, 1957.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U. S. C. 303, 155)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Amend § 2.104 (a) (5), the table of frequency allocations, insofar as it applies to column 10, for the frequency band 123.7–131.9 Mc, to read as follows:

(10)	(11)
123.7–131.9 (NG 49)	AERONAUTICAL MOBILE.

[F. R. Doc. 57-10842; Filed, Dec. 30, 1957; 8:50 a. m.]

[Rules Amdt. 2-11]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

MISCELLANEOUS AMENDMENTS

The Commission having under consideration the desirability of making certain editorial changes in §§ 2.521, 2.522, and 2.540 of its rules and regulations; and

It appearing that the amendments adopted herein are editorial in nature, and, therefore, prior publication of notice of proposed rule making under the provisions of section 4 of the Administrative Procedure Act is unnecessary, and the amendments may become effective immediately; and

It further appearing that the amendments adopted herein are issued pursuant to authority contained in sections 4 (i), (5) (d) (1) and 303 (r) of the Communications Act of 1934, as amended, and section 0.341 (a) of the Commission's Statement of Organization, Delegations of Authority and Other Information;

It is ordered, This 24th day of December 1957, that, effective December 31, 1957, §§ 2.521, 2.522, and 2.540 are amended as set forth below.

Released: December 26, 1957.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interpret or apply sec. 303, 48 Stat. 1082, as amended; sec. 5, 66 Stat. 713; 47 U. S. C. 303, 155)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

Part 2 of the Commission's rules is amended as follows:

1. Amend § 2.521 (a) by changing the reference, § 2.540 (c) to "§ 2.540."

2. Amend § 2.522 (a) by changing the reference, "§ 2.540 (c)" to "§ 2.540."

3. Amend § 2.522 (d) by changing the reference, "§ 2.540 (c)" to "§ 2.540."

4. Amend § 2.540 (d) by changing the text thereof to read as follows:

(d) Users shall not modify their own equipment except as provided in this paragraph or paragraph (e) of this section, as applicable.

[F. R. Doc. 57-10843; Filed, Dec. 30, 1957; 8:50 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

INCOME ATTRIBUTABLE TO SEVERAL TAXABLE YEARS

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth below in tentative form are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C.,

within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such a case, a public hearing will be held and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL] RUSSELL C. HARRINGTON,
Commissioner of Internal Revenue.

The following regulations are hereby prescribed under part I of subchapter Q of chapter 1 of the Internal Revenue Code of 1954, as amended by the act of August 11, 1955 (Public Law 366, 84th Cong., 69 Stat. 688), and the act of August 26, 1957 (Public Law 85-165, 71 Stat. 413). Except as specifically provided otherwise, these regulations are effective for taxable years beginning after December 31, 1953, and ending after August 16, 1954. Regulations under section 1305 are not included in these proposed regulations but will be published later with a separate notice of proposed rule making.

INCOME ATTRIBUTABLE TO SEVERAL TAXABLE YEARS

Sec.

§ 1.1301 *Statutory provisions; compensation from an employment.*

SEC. 1301. *Compensation from an employment*—(a) *Limitation on tax.* If an individual or partnership—

(1) Engages in an employment as defined in subsection (b); and

(2) The employment covers a period of 36 months or more (from the beginning to the completion of such employment); and

(3) The gross compensation from the employment received or accrued in the taxable year of the individual or partnership is not less than 80 percent of the total compensation from such employment,

then the tax attributable to any part of the compensation which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period which precedes the date of such receipt or accrual.

(b) *Definition of an employment.* For purposes of this section, the term "an employment" means an arrangement or series of arrangements for the performance of personal services by an individual or partnership to effect a particular result, regardless of the number of sources from which compensation therefor is obtained.

(c) *Rule with respect to partners.* An individual who is a member of a partnership receiving or accruing compensation from an employment of the type described in subsection (a) shall be entitled to the benefits of that subsection only if the individual has been a member of the partnership continuously for a period of 36 months or the period of the employment immediately preceding the receipt or accrual. In such a case the tax attributable to the part of the compensation which is includible in the gross income of the individual shall not be greater than the aggregate of the taxes which would have been attributable to that part had it been included in the gross income of the individual ratably over the period in which it was earned or the period during which the individual continuously was a member of the partnership, whichever period is the shorter. For purposes of this subsection, a member of a partnership shall be deemed to have been a member of the partnership for any period, ending immediately prior to becoming such a member, in which he was an employee of such partnership, if during the taxable year he received or accrued compensation attributable to employment by the partnership during such period.

§ 1.1301-1 *Introduction.* Sections 1301 through 1306 provide special rules to relieve a taxpayer from the amount of tax which otherwise results when an amount of income which has been earned over a period of years is received or accrued in one taxable year. Because of the graduated income tax rates this so-called bunching of income in one year usually subjects it to a higher rate of tax than would be payable if it had been received or accrued over the several years during which it was earned. Sections 1301 (relating to compensation from an employment), 1302 (relating to income from an invention or artistic work), 1303 (relating to back pay), 1304 (relating to compensatory damages for patent infringement), and 1305 (relating to damages for breach of contract) mitigate the tax consequences of such bunching of income by placing a limit upon the amount of tax to be paid for the taxable year in which such income is received or accrued. In effect, these sections generally treat the income as having been included in gross income ratably over the years (preceding receipt or accrual) in which it was earned. However, these sections have no effect on the income tax liability for prior taxable years; they simply provide a special method of computing the amount of tax for the year of receipt or accrual.

§ 1.1301-2 *Compensation from an employment*—(a) *Qualifications for limitation on tax.* If an individual or partnership—

(1) Engages in an employment (as defined in section 1301 (b) and paragraph (b) of this section); and

(2) The employment covers a period of 36 months or more (from the beginning to the completion of such employment); and

(3) The gross compensation from the employment received or accrued in the taxable year of the individual or partnership is not less than 80 percent of the total compensation from such employment,

then the tax attributable to any part of the compensation which is included in the gross income of any individual shall not be greater than the aggregate of the taxes attributable to such part had it been included in the gross income of such individual ratably over that part of the period of the employment which precedes the date of such receipt or accrual. The application of this paragraph may be illustrated by the following examples:

Example (1). A, an individual who makes his income tax returns on a calendar year basis and uses the cash receipts and disbursements method of accounting, began an employment, as defined in section 1301 (b) and paragraph (b) of this section, on February 17, 1951, and completed it on July 1, 1954. A's total compensation from such employment was $9,000, of which he received $1,000 on July 1, 1953, and $8,000 on the completion date. Since the employment covered more than 36 months and the $8,000 received in 1954 was not less than 80 percent of A's total compensation from such employment, he is entitled to the benefits of section 1301 in computing the tax payable with respect to the $8,000 reflected in his 1954 return. Section 1301 does not apply to the $1,000 received in 1953. Under section 1301 (a) the tax attributable to the $8,000 included in A's gross income for 1954 is not greater than the aggregate of the taxes attributable to such amount had it been received ratably over the calendar months included in the period from February 17, 1951, to July 1, 1954. However, if A had received an additional $5,000 in 1955 from such employment, he would not be entitled to the benefits of section 1301 with respect to either the $8,000 or the $5,000, since he would not have received in one taxable year at least 80 percent of the total compensation from such employment.

Example (2). If, in example (1) of this paragraph, A had commenced the employment on March 3, 1954, and completed it on August 22, 1957, and had been paid a total compensation of $10,000 for that employment on July 5, 1956, he would be entitled to the benefits of section 1301. However, the tax attributable to the $10,000 included in A's gross income for 1956 cannot be greater than the aggregate of the taxes attributable to such amount had it been received ratably over the calendar months included in the period from March 3, 1954, to July 5, 1956, the date on which the $10,000 was received.

(b) *Definition of an employment.* (1) (i) The term "an employment" means an arrangement or series of arrangements for the performance of personal services by an individual or partnership to effect a particular result, regardless of the number of sources from which compensation for such services is obtained. Thus, there must be an arrangement, and the arrangement must be for the performance of a particular project. In other words, there must be an understanding for the performance of services to accomplish a particular result. Accordingly, an arrangement to perform general services is not an employment within the meaning of section 1301 either as to any particular project on

which services are performed or as to the general services since there is no understanding that the services are to accomplish a particular result.

(ii) Whether an employment exists is a question which must be determined by a consideration of all the facts in each case. The primary factor in making such a determination is what the particular profession, business, or industry would normally consider as a distinct project or result. The statements of the parties and the contracts they make, if any, shall be considered in those cases where the project or result cannot be determined under the preceding sentence.

(iii) To qualify as an employment the services must relate to a particular project, such as a particular law case, and must not consist of a set of unrelated services performed for the same person. Furthermore, the individual steps performed by a taxpayer in connection with his project do not each constitute an employment; the services rendered by the taxpayer with respect to the entire project represent the employment.

(iv) The time when an employment begins and ends, and whether the period over which an employment extends includes conference and study time, depend upon the facts of each case. However, in determining the period over which an employment extends, there shall be included the time during which the efforts of the individual or partnership were unsuccessful in effecting the particular result.

(2) The application of the rules described in subparagraph (1) of this paragraph may be illustrated by the following examples:

Example (1). A was retained by X Corporation to perform general legal services. During the period 1955 through 1960, A performed miscellaneous legal services on numerous unrelated matters, each of which effected a particular result, and some of which extended over a period of more than 36 months. A was compensated by a single payment in 1960. A's services do not constitute an employment either as to the unrelated matters on which he worked or the general services performed over the period 1955 through 1960, since the arrangement was for the performance of services generally and not for the performance of any particular results.

Example (2). B was retained as an attorney by the Y Corporation to perform general legal services. An anti-trust action was brought against Y and, since the defense of such an action was beyond the scope of the agreement to perform general legal services, a separate arrangement was entered into between Y and B, whereby B was to be paid a specified additional amount for defending Y in the anti-trust suit. B's services in connection with such suit represent an employment separate and distinct from his general legal services for Y, and such services were performed pursuant to a separate arrangement.

Example (3). As part of a traffic flow improvement program the City of Z enters into a contract with C, a civil engineer, under which C agrees to perform services in connection with the construction of a highway bypassing the city, a vehicular tunnel under a river, and an elevated roadway in a congested industrial area of the city. C's compensation for his services with respect to each of these construction projects is fixed in the contract. Since the services performed in connection with each such construction project would normally be viewed by the engineering profession as a distinct project, C's services in connection with each of these construction projects constitute a separate employment. No contractual arrangement between the parties can operate to change the determination of the projects involved. Regardless of its terms, the contract will be viewed as an arrangement for the performance of services to effect three specifically identifiable results. Thus, the arrangement would constitute three distinct employments, even though the contract might provide for a single lump sum payment to be made only upon completion of all three projects.

Example (4). D entered into an agreement with Z Corporation to direct 5 motion picture productions for it in 5 years. Each of the 5 pictures was to be wholly unrelated to the others as entertainment products for public consumption. D's compensation for his services with respect to each picture was to be a certain percentage of the gross proceeds received from its showing. Each picture would normally be viewed by the motion picture industry as a distinct undertaking or project, and D's services in connection with each picture constitute a separate employment. As in the case of example (3), no contractual arrangement between the parties can operate to change the determination of the projects involved.

Example (5). E, a producer of television programs, entered into a contract with Y Television Network to produce a series of documentary films. While each film produced by E was a complete presentation of the specific subject matter, the entire series of films dealt with such subjects and was presented in such a manner as to identify the series as a unit in the public mind. Production of the films required coordinated planning of the whole series. The entire series of films would normally be viewed by the television industry was a distinct undertaking or project, and, therefore, E's services in connection with production of the series of films constitute a single employment. As in the case of examples (3) and (4), no contractual arrangement between the parties can operate to change the determination of the projects involved.

Example (6). F was appointed trustee of a trust which consisted of income producing and non-income producing property. Under a decree of the state court having jurisdiction over the trust, F was awarded certain commissions with respect to principal and certain commissions with respect to income. The fact that such separate compensation was awarded by the court did not establish that two employments were involved. F's services with respect to the principal and those with respect to the income of the trust were merely integral parts of one employment, i. e., the administration of the trust in its entirety.

Example (7). G was retained and served as legal counsel to the trustees of a trust. He also served as one of the trustees of the trust. G's services in each capacity constituted a separate employment, regardless of whether under the laws of the state having jurisdiction of the trust the services rendered by a trustee as legal counsel are eligible for compensation distinct from those rendered by him as trustee.

Example (8). H, an architect, was employed by the City of Z to draft the plans for, and supervise the construction of, a school building. The building was of a type that is normally both planned by and constructed under the supervision of an architect. His employment consisted of his entire services from the beginning of the preparation of the plans to his completion of supervision of the building's construction. The drafting of the plans and the supervision of the construction were merely interrelated steps in the performance of the entire employment.

Example (9). K, an attorney, received a fee from certain stockholders of corporation X, who employed him to represent them in a stockholders' suit. K also received as compensation for his services in connection with such suit an amount allowed by the court out of the shares of the proceeds of the suit payable to the stockholders of corporation X who were unrepresented by counsel. The fact that K receives compensation from two sources will not cause two employments to exist. For purposes of section 1301 the number of sources from which the compensation is obtained is immaterial in determining the number of employments.

(c) *Allocation of income.* The compensation from an employment is to be treated as if it had been received in equal portions in each of the calendar months (including those of the current taxable year) which fall within the period of employment preceding the receipt or accrual of the compensation. Thus, the portion of the compensation allocable to each taxable year involved in such period of employment is an amount equal to the entire compensation from the employment received or accrued in the current taxable year, divided by the entire number of calendar months included within the part of the period of employment which precedes the date of receipt or accrual of such compensation, and multiplied by the number of such calendar months falling within the particular taxable year. The provisions of this paragraph may be illustrated by the following examples:

Example (1). A, an individual who makes his income tax returns on a calendar year basis and uses the cash receipts and disbursements method of accounting, receives $40,000 on September 30, 1954. This amount is the entire compensation from an employment (as defined in section 1301 (b)) covering a 40-month period beginning on June 1, 1951, and ending on September 30, 1954. $1,000 must be allocated to each of the calendar months included within the period of the employment. Thus, $7,000 is allocated to 1951, $12,000 to 1952, $12,000 to 1953, and $9,000 to 1954.

Example (2). Assume the same facts as in example (1), except that A makes his income tax returns on the basis of a taxable year ended June 30. The $40,000 is allocated as follows: $1,000 to the taxable year ended June 30, 1951, $12,000 each to the taxable years ended June 30, 1952, June 30, 1953, and June 30, 1954, and $3,000 to the taxable year ended June 30, 1955 (the current taxable year).

Example (3). Assume the same facts as in example (1), except that A receives the $40,000 on February 1, 1954 (before completion of the employment), instead of September 30, 1954. In this case, there are 32 calendar months included within the part of the period of the employment which precedes the date the compensation is received. Accordingly, $1,250 ($40,000 divided by 32) must be allocated to each of the calendar months included within the period from June 1, 1951, through January 31, 1954. Thus, $8,750 is allocated to 1951, $15,000 to 1952, $15,000 to 1953, and $1,250 to 1954.

Example (4). B, an individual who makes his income tax returns on a calendar year basis and uses the cash receipts and disbursements method of accounting, is engaged in an employment which covers a 40-month period beginning on May 1, 1951, and ending on August 31, 1954. The total compensation from the employment is $74,000, of which $34,000 is paid to B on

March 1, 1954, and $40,000 on August 31, 1954. The $34,000 payment must be allocated to the 34 calendar months included within the part of the period of the employment which precedes the date such payment is received (March 1, 1954). Accordingly, with respect to the $34,000 payment, $8,000 is allocated to 1951, $12,000 to 1952, $12,000 to 1953, and $2,000 to 1954. Since the $40,000 payment was received on the date the employment ended it must be allocated to the 40 calendar months included within the entire period of the employment. Accordingly, with respect to such payment, $8,000 is allocated to 1951, $12,000 to 1952, $12,000 to 1953, and $8,000 to 1954. The entire compensation of $74,000 will therefore be allocated as follows: $16,000 to 1951, $24,000 to 1952, $24,000 to 1953, and $10,00 to 1954.

Example (5). C, an individual who makes his income tax returns on a calendar year basis and uses the cash receipts and disbursements method of accounting, is engaged in an employment which covers a 36-month period beginning on February 1, 1954, and ending on January 31, 1957. The total compensation from the employment of $36,000 is paid to C on June 1, 1957. In this case, there are 36 months in the period of the employment which precede the date of receipt of the $36,000 by C. The months of February through May 1957, are not part of the period of employment and therefore no income is to be allocated to those months. Accordingly, the $36,000 is allocated as follows: $11,000 to 1954, $12,000 to 1955, $12,000 to 1956, and $1,000 to 1957.

(d) *Computation of tax*—(1) *Steps of computation.* The following computation shall be made in order to determine whether the limitation on tax prescribed in section 1301 (a) and paragraph (a) of this section applies to compensation from an employment received or accrued in a taxable year:

(i) Compute the tax for the current taxable year by including in the gross income of such year the compensation from an employment received or accrued in such year.

(ii) Compute the tax for the current taxable year without such inclusion.

(iii) Compute the tax attributable to the compensation from an employment allocated to each of the taxable years in accordance with paragraph (c) of this section. The amount of the tax attributable to the compensation from the employment so allocated is the difference between the tax for each such year computed with the inclusion in gross income of each year of the allocable portion of such compensation and the tax for each year computed without such inclusion.

(iv) The tax for the current taxable year shall be the lesser of (*a*) the tax for the current taxable year as computed under subdivision (i) of this subparagraph, or (*b*) the tax for such year as computed under subdivision (ii) of this subparagraph, plus the aggregate of the taxes attributable to the allocated compensation as computed under subdivision (iii) of this subparagraph.

(2) *Effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover.* (i) In computing the tax for any taxable year under this paragraph, any item which depends upon the amount of gross income, adjusted gross income, or taxable income shall be recomputed to take into consideration the amount of compensation allocated to such year (or from such year in the case of the current taxable year). For example, if by allocating $1,000 of compensation to 1955, adjusted gross income for 1955 is increased from $5,000 to $6,000, then the general limitation on allowable charitable deductions under section 170 (b) (1) (B) is increased from $1,000 to $1,200 and the amount of the nondeductible medical expenses under section 213 is increased from $150 to $180.

(ii) In computing the tax attributable to the compensation from an employment under this paragraph for any taxable year to or from which compensation is allocated, the effect of amounts of compensation allocated to any taxable year (or from the current taxable year) with respect to a net operating loss carryback or carryover or a capital loss carryover, shall be taken into account. Moreover, in determining the amount of tax attributable to such compensation, a computation shall also be made for any taxable year to which no amount of compensation is allocated but which is affected by a net operating loss carryback or carryover or by a capital loss carryover determined by reference to a taxable year to which amounts are so allocated and which net operating loss carryback or carryover or capital loss carryover is reduced or increased by such amounts so allocated. See subparagraph (3) (iv) (*d*) and (*e*) of this paragraph.

(3) *Example.* The computations described in subparagraph (1) of this paragraph may be illustrated by the following example: On January 1, 1952, A, unmarried, was retained as an attorney in an anti-trust suit. This employment continued until June 30, 1955, when the action was terminated and A received a fee of $84,000 as total compensation for his services. Since all the requirements of section 1301 are met with respect to the $84,000, the following tax results will occur, assuming that A's net income (or loss) for the years 1951, 1952, 1953 and his taxable income from 1954 and 1955 were as follows: 1951, $20,600 (which reflects a net operating loss carryback from 1952); 1952, net operating loss $2,000; 1953, $50,600; 1954, $32,000; $1955, $100,000 ($16,000 plus the $84,000 fee).

(i) Allocation of fee to period of employment:

1955 (6 months)	$12,000
1954 (12 months)	24,000
1953 (12 months)	24,000
1952 (12 months)	24,000

(ii) Tax for 1955 computed by including the $84,000 fee in gross income; $67,320.

(iii) Tax for 1955 computed without including the $84,000 fee in gross income; $5,200.

(iv) Taxes attributable to the $84,000 fee allocated to the various taxable years:

	Prior to allocation under sec. 1301		*Under sec. 1301*
(*a*) Tax attributable to 1955:			
Taxable income			$28,000 ($16,000+ $12,000)
Tax		$11,980	11,980
Less		5,200	
Amount of tax attributable to 1955 under sec. 1301			6,780
(*b*) Tax attributable to 1954:			
Taxable income	$32,000		56,000
Tax	14,460		31,320
Less		31,320 14,460	
Section 1301 increase attributable to 1954			16,860
(*c*) Tax attributable to 1953:			
Net income	50,600		74,600
Less: Personal exemption	600		600
	50,000		74,000
Tax	28,916		47,936
Less		47,936 28,916	
Section 1301 increase attributable to 1953			19,020
(*d*) Tax attributable to 1952:			
Net income	($2,000 net operating loss).		22,000
Less: Personal exemption			600
			21,400
Tax and section 1301 increase attributable to 1952			8,984
(*e*) Tax attributable to 1951:			
Net income	$20,600		22,600
Less: Personal exemption	600		600
	20,000		22,000
Tax	7,396		8,536
Less		$8,536 7,396	
Section 1301 increase attributable to 1951			1,140
(*f*) Aggregate of taxes resulting from allocation of compensation under section 1301:			
1955			6,780
1954			16,860
1953			19,020
1952			8,984
1951			1,140
			52,784

(v) Tax for 1955 under section 1301: $57,984.

Since the tax for 1955 computed without including the $84,000 fee in gross income ($5,200), plus the aggregate of taxes attributable to the allocation of such fee over the period of employment ($52,784) equals $57,984, which is a lesser sum than $67,320 (the amount of tax for 1955 computed by including the entire fee in income for 1955), $57,984 is the amount of tax for 1955 under the provisions of section 1301.

(4) *Compensation received from several employments allocated to same period.* If an individual computes his income tax under section 1301 for a particular taxable year and in a subsequent taxable year receives or accrues compensation from another employment, the period of which coincides to any extent with the period covered by the employment involved in the previous taxable year, such individual must, in availing himself of section 1301 for such subsequent taxable year, take into consideration the fact that he has previously allocated compensation to all or a part of the period covered by the employment later compensated. The same principle is applicable where income entitled to the benefits of section 1302, 1303, 1304, or 1305 is allocated to a year to which other income entitled to the benefits of section 1301, 1302, 1303, 1304, or 1305 had previously been allocated. For example, an individual commenced an employment on January 1, 1950, and completed it on December 31, 1954, at which time he received $60,000 as total compensation therefrom. In connection with his return for 1954, he allocated $1,000 to each of 60 calendar months included within the period of the employment and determined his income tax under the provisions of section 1301. He also commenced a second employment on January 1, 1952, and completed it on December 31, 1955, at which time he received total compensation of $48,000. In determining whether the limitation on tax prescribed in section 1301 (a) is applicable for the calendar year 1955, he must, in connection with allocating $1,000 to each of the 48 calendar months included within the period of such employment and computing the tax attributable thereto, also include in his income for the years 1952, 1953, and 1954, the amount of $12,000 previously allocated to each of such years in connection with his return for the calendar year 1954.

(e) *Rules with respect to partners—* (1) *Qualifications for limitations on tax.* An individual who is a member of a partnership receiving or accruing compensation from an employment of the type described in section 1301 (a) shall be entitled to the benefits of section 1301 only if: (i) He has been a member of the partnership continuously for a period of 36 months immediately preceding the receipt or accrual of such compensation by the partnership, or (ii) he has been a member of the partnership continuously for the period of the employment immediately preceding such receipt or accrual. It is immaterial whether the individual actually rendered services with respect to the employment to which the compensation is attributable.

(2) *Limitation on tax.* (i) If a partner qualifies under section 1301 (c) and subparagraph (1) of this paragraph for the benefits of section 1301 with respect to a share of partnership income includible in his gross income, the tax attributable to such share shall not be greater than the aggregate of the taxes which would have been attributable to such share had it been included in the gross income of the partner ratably over (*a*) the period in which it was earned immediately preceding the receipt or accrual of the compensation by the partnership, or (*b*) the period during which the individual continuously was a member of the partnership immediately preceding such receipt or accrual, whichever is the shorter period.

(ii) If (*a*) a partnership receives or accrues compensation from an employment of the type described in section 1301 (a) and the period of such employment immediately preceding the date of receipt or accrual is less than 36 months, and (*b*) if any individual has been a member of such partnership continuously for such period, then such individual shall be entitled to allocate his share of the compensation over such period.

(iii) If an individual has been a member of a partnership continuously for a period of at least 36 months immediately preceding the receipt or accrual of compensation from an employment of the type described in section 1301 (a), but such individual has not been a member of the partnership for the total period during which such compensation was earned by the partnership, the allocation of such individual's share of the compensation is limited to the period during which he was continuously a member of the partnership.

(iv) For purposes of section 1301 a partner who has retired under local law will nevertheless be treated as a partner until his interest in the compensation of the partnership from an employment has terminated, but only if such partner would have satisfied the employment requirement of section 1301 (c) if the partnership had received or accrued compensation from such employment on the date of his retirement. In such a case the retired partner shall be entitled to allocate his share of the compensation only over the period of employment preceding his retirement and during which he was a member of the partnership.

(v) The provisions of this paragraph may be illustrated by the following examples:

Example (*1*). A became a member of the ABC partnership on June 1, 1950. The partnership, which is on the calendar year basis, began an employment on June 1, 1952, and completed it on July 1, 1955. On June 1, 1954, the partnership had received $24,000 as total compensation from such employment. A's $8,000 share of such compensation was included in his gross income for 1954. Since the $24,000 payment was from an employment of the type described in section 1301 (a) and since A had been a member of the partnership continuously for more than 36 months at the date of the receipt of the payment, A is entitled to allocate his $8,000 share over the period in which the income was earned prior to the date of its receipt by the partnership. Thus, for purposes of making the tentative tax computation, A must allocate the $8,000 ratably over the period from June 1, 1952, through May 31, 1954.

Example (*2*). Assume the same facts as in example (1) of this subdivision except that A retires from the partnership on July 1, 1954. Such retirement is immaterial for purposes of section 1301; the tax consequences would be the same as in example (1) of this subdivision for the reasons therein set forth.

Example (*3*). A became a member of the ABC partnership on February 1, 1953. The partnership began an employment on July 1, 1953, and completed it on July 1, 1956. The partnership received $24,000 as compensation from such employment on January 1, 1955. The $24,000 payment was at least 80 percent of the partnership's total compensation from the employment. A included his $8,000 share in his gross income for 1955. Since the employment was of the type described in section 1301 (a) and since A was a member of the partnership continuously for the period of the employment immediately preceding the receipt of the payment, A is entitled to the benefits of section 1301 (a) with respect to his share, even though he had not been a partner for 36 months at the time of the receipt of the compensation. The period over which his share must be allocated for purposes of computing the tentative tax is July 1, 1953, through December 31, 1954.

Example (*4*). Assume the same facts as in example (3), except that the employment is completed on February 1, 1956. In such case A would not be entitled to the benefits of section 1301 (a), since the employment by the partnership did not cover a period of 36 months or more from its beginning to its completion.

Example (*5*). The ABC partnership began an employment on June 1, 1952. D became a member of the partnership on June 1, 1955. On June 1, 1957, the partnership received $30,000 as compensation from the employment. D's share of this payment included in his gross income for 1957 was $5,000. The employment terminated on June 1, 1959. The $30,000 payment was at least 80 percent of the total compensation from the employment. D is not entitled to the benefits of section 1301 since he was neither a member of the partnership continuously for a period of 36 months immediately preceding the receipt of the payment by the partnership, nor was he a member of the partnership continuously for the period of employment immediately preceding such receipt.

Example (*6*). The AB partnership began an employment on February 1, 1955. On February 1, 1957, after the employment had been in progress for two years, C joined the partnership. The employment was completed on July 31, 1960, and covered a period of 66 calendar months. The total compensation from the employment was $198,000 and was received on August 1, 1960, each partner's share amounting to $66,000. A and B are entitled to allocate their shares of the compensation over the full period of the employment, that is, over the 66 calendar months from February 1, 1955, through July 31, 1960. However, C can allocate his share only over a 42-month period extending from February 1, 1957, through July 31, 1960, the period during which he was continuously a member of the partnership. The shares of the total compensation received by A and B are allocable in the amount of $1,000 per month over 66 months, while C must allocate his share at the rate of $1,571.43 per month over 42 months.

Example (*7*). The ABC partnership began an employment on February 1, 1955. On July 31, 1957, after the employment had been in progress for 30 months, B retired from the partnership. The employment was com-

pleted on July 31, 1960, and covered a period of 66 calendar months. The total compensation from the employment was $180,000 and was received on August 1, 1960. Pursuant to the terms of the partnership agreement, A and C each received $75,000, while B received $30,000 as his share. A and C are entitled to allocate their shares of the compensation over the full period of the employment, that is, over the 66 calendar months from February 1, 1955, through July 31, 1960. Since under the terms of the partnership agreement B retained an interest in the compensation from the employment when he retired from the partnership, B will be treated as a partner and be entitled to allocate his $30,000 share over the 30 months of the period of employment preceding his retirement.

(3) *Individual engaged in an employment who becomes a member of a partnership which continues with such employment.* If an individual begins an employment in an individual capacity and later becomes a member of a partnership which continues with such employment, the employment shall be considered, with respect to such individual, as one employment covering both the period during which a portion of the employment was performed by such individual in his capacity as such and the period during which a portion of the employment was performed by the partnership. However, with respect to the other members of the partnership, the period of the employment is limited to the period of the employment performed by the partnership. For example, A, an individual, begins an employment for the X Company on June 1, 1952. On January 1, 1953, A forms a partnership with B and C. The partnership continues with the employment for the X Company and completes it on June 1, 1955, at which time the partnership receives $25,000 as total compensation for the services rendered on the employment. A is entitled to the benefits of section 1301 with respect to his share of the $25,000 and can allocate it over the period June 1, 1952, through May 31, 1955, but B and C are not entitled to such benefits. If, however, the partnership had completed the employment on January 1, 1956, and had received the $25,000 on that date, all three partners would be entitled to section 1301 benefits. A would allocate his share over the period June 1, 1952, through December 31, 1955, whereas B and C would allocate their shares over the period January 1, 1953, through December 31, 1955. Furthermore, if the employment had been completed on January 1, 1956, but the $25,000 had been received by the partnership on January 1, 1955, all partners would be entitled to section 1301 benefits; A allocating his share over the period June 1, 1952, through December 31, 1954, and B and C allocating their shares over the period January 1, 1953, through December 31, 1954.

(4) *Period of allocation where income received by a partner who was formerly an employee.* Where a member of a partnership who was formerly an employee of such partnership includes in his gross income a part of the compensation received or accrued by the partnership from an employment of the type described in section 1301 (a), he shall be deemed to have been a member of such partnership for the period during which he was an employee ending immediately prior to his becoming such a member. It is immaterial for purposes of this paragraph whether such an individual, as an employee, actually rendered services with respect to the employment to which such compensation is attributable. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, an individual, became an employee of the XYZ law partnership on June 1, 1952, and a member of the partnership on June 1, 1956. The partnership commenced an employment on June 1, 1954, and completed it on June 1, 1958, at which time it received a payment of $50,000, which satisfied all of the requirements of section 1301 (a). A's share of the $50,000 payment includible in his gross income for 1958 was $5,000. For purposes of section 1301 (c), A is deemed to have been a partner for the period June 1, 1954, through May 31, 1958, and the amount of $5,000 must be allocated ratably over the period June 1, 1954, through May 31, 1958.

Example (2). Assume the same facts as in example (1), except that on June 1, 1955, A left the employ of the partnership and returned on January 1, 1956. In such a case, A is a partner for the purposes of section 1301 for the period January 1, 1956, to June 1, 1958. Under such circumstances, A would not qualify for the benefits of section 1301 (a), since he was not a member of the partnership continuously for the period of 36 months immediately preceding receipt by the partnership of the compensation from the employment, nor was he a member of the partnership continuously for the period of employment immediately preceding the receipt of the compensation by the partnership.

(5) *Effect of withdrawal of a partner or termination of a partnership.* The withdrawal of a partner from a partnership or the termination of a partnership will not bring an employment to an end with respect to any partner who continues to participate in such employment either in his individual capacity or as a partner in a partnership which continues with such employment. For example, partnership AB began an employment on January 1, 1955. On January 1, 1957, B sold his interest to C under such circumstances as to cause the partnership to terminate under section 708 (b) (1). However, partnership AC continued with the employment and completed it on January 1, 1959, at which time the partnership received $100,000 as total compensation for the employment. Since A had an interest in the employment as a partner continuously for a period of 48 months he is entitled to the benefits of section 1301 with respect to his share of the compensation from the employment. C does not qualify, however, since he participated in the employment as a member of a partnership for a period of less than 36 months.

(6) *Effective date.* Section 1301 (c) and this paragraph shall apply only to amounts received or accrued after March 1, 1954. Pursuant to section 7851 (a) (1) (C), the regulations prescribed in this paragraph shall also apply to taxable years beginning before January 1, 1954, and ending after December 31, 1953, and to taxable years beginning after December 31, 1953, and ending before August 17, 1954, although such years are generally subject to the Internal Revenue Code of 1939. Notwithstanding any other provision of the Internal Revenue Code of 1954, section 107 of the Internal Revenue Code of 1939 shall apply to amounts received or accrued as a partner on or before March 1, 1954, and to the computation of tax on amounts received or accrued on or before March 1, 1954.

§ 1.1302 *Statutory provisions; income from an invention or artistic work.*

SEC. 1302. *Income from an invention or artistic work*—(a) *Limitation on tax.* If—

(1) An individual includes in gross income amounts in respect of a particular invention or artistic work created by the individual; and

(2) The work on the invention or the artistic work covered a period of 24 months or more (from the beginning to the completion thereof); and

(3) The amounts in respect of the invention or the artistic work includible in gross income for the taxable year are not less than 80 percent of the gross income in respect of such invention or artistic work in the taxable year plus the gross income therefrom in previous taxable years and the 12 months immediately succeeding the close of the taxable year,

then the tax attributable to the part of such gross income of the taxable year which is not taxable as a gain from the sale or exchange of a capital asset held for more than 6 months shall not be greater than the aggregate of the taxes attributable to such part had it been received ratably over, in the case of an invention, that part of the period preceding the close of the taxable year or 60 months, whichever is shorter, or, in the case of an artistic work, that part of the period preceding the close of the taxable year but not more than 36 months.

(b) *Definitions.* For purposes of this section—

(1) *Invention.* The term "invention" means a patent covering an invention of the individual.

(2) *Artistic work.* The term "artistic work" means a literary, musical, or artistic composition or a copyright covering a literary, musical, or artistic composition.

§ 1.1302–1 *Income from an invention or artistic work*—(a) *Qualifications for limitation on tax.* (1) The tax attributable to amounts included in gross income by an individual in respect of a particular invention or artistic work which he created shall be limited in accordance with the provisions of paragraph (c) of this section, provided:

(i) The work upon the invention or artistic work covered a period of 24 months or more (from the beginning to the completion thereof), and

(ii) The amounts includible in gross income of the individual for the taxable year from such invention or artistic work are not less than 80 percent of the gross income therefrom in the taxable year, the preceding taxable years, and the 12 months immediately succeeding the close of the taxable year.

(2) That part of the gross income from such artistic work or invention which is taxable as a gain from the sale or exchange of a capital asset held for more than 6 months is excluded from the benefits of section 1302.

(3) For the purpose of determining the tax which would be attributable to gain on the sale or exchange of an artistic work had such gain been received

ratably in any prior taxable year, such gain shall be treated as gain from the sale or exchange of property which is not a capital asset.

(b) *Definitions*—(1) *Invention.* For purposes of section 1302 and this section the term "invention" means a patent covering an invention of the individual.

(2) *Artistic work.* For purposes of section 1302 and this section the term "artistic work" means a literary, musical, or artistic composition or a copyright covering a literary, musical, or artistic composition.

(c) *Limitation on tax*—(1) *Rule.* Where amounts includible in gross income qualify under paragraph (a) of this section, the tax attributable thereto in the taxable year shall not be greater than the aggregate of the taxes attributable thereto had such amounts been received ratably over the part of the period of the work which precedes the close of the taxable year, but limited to a period of 60 calendar months in the case of an invention and limited to a period of 36 calendar months in the case of an artistic work.

(2) *Allocation of income.* The gross income from the invention or artistic work is to be treated as if it had been received in equal portions in each of the calendar months (including those of the current taxable year) which fall within the period of work preceding the close of the taxable year (not, however, exceeding 60 calendar months in the case of an invention and 36 calendar months in the case of an artistic work). Thus, the portion of the gross income from the invention or artistic work allocable to each taxable year involved in such period of work is an amount equal to the entire amount of gross income from the invention or artistic work received or accrued in the current taxable year, divided by the entire number (but not to exceed 60 in the case of an invention and 36 in the case of an artistic work) of calendar months included within the period of work which precedes the close of the current taxable year, and multiplied by the number of such calendar months falling within the particular taxable year. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A, an individual who makes his returns on a calendar year basis and uses the cash receipts and disbursements method of accounting, received $36,000 (taxable as ordinary income) on October 1, 1954, in full payment for a musical composition. A commenced work on this composition on July 10, 1950, and completed it on January 29, 1955. Although the period of work covers 55 calendar months, allocations may be made to only the last 36 calendar months included within the part of the period of work which precedes the close of 1954 (the current taxable year). Therefore, $1,000 ($36,000 divided by 36) must be allocated to each of the 36 calendar months preceding January 1, 1955. Accordingly, $12,000 is allocated to 1952, $12,000 to 1953, and $12,000 to 1954 (the current taxable year).

Example (2). Assume the same facts as in example (1) except that A received $54,000 (taxable as ordinary income) for a patent covering an invention of his. In this case, allocations must be made to each of the 54 calendar months included within the part of work which precedes the close of 1954 (the current taxable year). Therefore, $1,000 ($54,000 divided by 54) must be allocated to each of the 54 calendar months preceding January 1, 1955. Accordingly, $6,000 is allocated to 1950 and $12,000 is allocated to each of the years 1951, 1952, 1953, and 1954.

Example (3). Assume the same facts as in example (1) except that the period of work was commenced by A on July 1, 1953, and completed on September 1, 1956. Although the period of work covers 38 calendar months, allocations may be made to only the 18 calendar months which are included within the part of the period of work which precedes the close of 1954 (the current taxable year). Therefore, $2,000 ($36,000 divided by 18) must be allocated to each of the 18 calendar months preceding January 1, 1955. Accordingly, $12,000 is allocated to 1953 and $24,000 to 1954.

(d) *Computation of tax*—(1) *Steps of computation.* The following computation shall be made in order to determine whether the limitation on tax prescribed in section 1302 (a) and paragraph (c) of this section applies to income from an invention or artistic work:

(i) Compute the tax for the current taxable year by including in the gross income of such year the amount of gross income from the invention or artistic work received or accrued in such year.

(ii) Compute the tax for the current taxable year without such inclusion.

(iii) Compute the tax attributable to the gross income from the invention or artistic work allocated to each of the taxable years in accordance with paragraph (c) (2) of this section. The amount of the tax attributable to the gross income from the invention or artistic work so allocated is the difference between the tax for each such year computed with the inclusion in gross income of each year of the allocable portion of the gross income from the invention or artistic work and the tax for each such year computed without such inclusion.

(iv) The tax for the current taxable year shall be the lesser of (*a*) the tax for the current taxable year as computed under subdivision (i) of this subparagraph, or (*b*) the tax for such year as computed under subdivision (ii) of this subparagraph, plus the aggregate of the taxes attributable to the allocated gross income from an invention or artistic work as computed under subdivision (iii) of this subparagraph.

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301–2.

(3) See paragraph (d) (4) of § 1.1301–2 for the computations which are necessary when an amount of gross income from an invention or artistic work is allocated to a period to which there has also been allocated other income entitled to the benefits of section 1301, 1302, 1303, 1304, or 1305.

§ 1.1303 *Statutory provisions; income from back pay.*

SEC. 1303. *Income from back pay*—(a) *Limitation on tax.* If the amount of the back pay received or accrued by an individual during the taxable year exceeds 15 percent of the gross income of the individual for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the taxable year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable, as determined under regulations prescribed by the Secretary or his delegate.

(b) *Definition of back pay.* For purposes of this section, the term "back pay" means amounts includible in gross income under this subtitle which are one of the following—

(1) Remuneration, including wages, salaries, retirement pay, and other similar compensation, which is received or accrued during the taxable year by an employee for services performed before the taxable year for his employer and which would have been paid before the taxable year except for the intervention of one of the following events:

(A) Bankruptcy or receivership of the employer;

(B) Dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings;

(C) If the employer is the United States, a State, a Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any of the foregoing, lack of funds appropriated to pay such remuneration; or

(D) Any other event determined to be similar in nature under regulations prescribed by the Secretary or his delegate.

(2) Wages or salaries which are received or accrued during the taxable year by an employee for services performed before the taxable year for his employer and which constitute retroactive wage or salary increases ordered, recommended, or approved by any Federal or State agency, and made retroactive to any period before the taxable year.

(3) Payments which are received or accrued during the taxable year as the result of an alleged violation by an employer of any State or Federal law relating to labor standards or practices, and which are determined under regulations prescribed by the Secretary or his delegate to be attributable to a prior taxable year.

§ 1.1303–1 *Income from back pay*—(a) *Qualifications for limitation on tax.* If the amount of "back pay", as defined in section 1303 (b) and paragraph (b) of this section, received or accrued by an individual during the taxable year exceeds 15 percent of the individual's gross income for such year, the part of the tax attributable to the inclusion of such back pay in gross income for the taxable year shall not be greater than the aggregate of the increases in the taxes which would have resulted from the inclusion of the respective portions of such back pay in gross income for the taxable years to which such portions are respectively attributable. The computation of this limitation on tax shall be made in accordance with the provisions of paragraph (d) of this section.

(b) *Definition of back pay*—(1) *Remuneration delayed because of certain events.* "Back pay" means remuneration including wages, salaries, pensions, retirement pay, and other similar compensation, received or accrued during the taxable year and includible in gross income by an employee for services performed prior to the taxable year for his employer and which would have been paid prior to the taxable year but for the intervention of any one of the following events:

(i) Bankruptcy or receivership of the employer;

(ii) Dispute as to the liability of the employer to pay such remuneration, which is determined after the commencement of court proceedings;

(iii) If the employer is the United States, a State, a Territory, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any of the foregoing, lack of funds appropriated to pay such remuneration; or

(iv) Any other event determined to be similar in nature under this subparagraph. An event will be considered similar in nature to those events specified in subdivisions (i), (ii), and (iii) of this subparagraph only if the circumstances are unusual, if they are of the type specified therein, if they operate to defer payment of the remuneration for the services performed, and if payment, except for such circumstances, would have been made prior to the taxable year in which received or accrued.

For the purposes of section 1303 and this section, the term "back pay" does not include remuneration which is deemed to be constructively received in the taxable year or years in which the services were performed, remuneration paid in the current year in accordance with the usual practice or custom of the employer even though received in respect of services performed in a prior year or years, additional compensation for past services where there was no prior agreement or legal obligation to pay such additional compensation, or any amount which is not includible in gross income under subtitle A of the Internal Revenue Code of 1954.

(2) *Retroactive wage and salary increases.* "Back pay" also includes retroactive wage or salary increases received or accrued during a taxable year by an employee for services performed in a prior taxable year which have been ordered, recommended, or approved by any Federal or State agency such as, but not limited to, boards authorized by the Railway Labor Act, as amended (45 U. S. C. 151–188), comparable State organizations, and United States and State courts.

(3) *Payments resulting from alleged employer violation of certain laws.* "Back pay" also includes payments which are received or accrued during the taxable year as a result of an alleged violation by an employer of sections 6 and 7 of the Fair Labor Standards Act of 1938, as amended (29 U. S. C. 206, 207), and which are made retroactive to any period prior to the taxable year and payments which are received or accrued during the taxable year arising out of an alleged violation by an employer of any State or Federal law relating to labor standards or practices, such as payments received to effectuate the policies of the National Labor Relations Act, as amended (29 U. S. C. 151 et seq.).

(c) *Allocation of back pay to prior years.* For the purpose of determining under section 1303 (a) the particular taxable year or years to which the back pay is attributable and, if such back pay is attributable to more than one taxable year, the amount thereof which is attributable to each of such taxable years, the following rules will be applicable:

(1) Back pay, as defined in section 1303 (b) (1), shall be deemed to be attributable to a particular taxable year to the extent that it would have been paid in such year except for the intervention of one of the events described in section 1303 (b) (1).

(2) Back pay, as defined in section 1303 (b) (2), shall be deemed to be attributable to a particular taxable year to the extent that it would have been paid in such year had the wage or salary increase described in section 1303 (b) (2) been actually put into effect on the date to which it was first made retroactive.

(3) Back pay, as defined in section 1303 (b) (3), shall be deemed to be attributable to a particular taxable year to the extent that it represents payments in respect of the alleged violation described in section 1303 (b) (3) which occurred in such year or which continued during any part of such year.

(4) In those cases where a computation has been made by, or under the direction of, a Federal or State agency (including any Federal or State court) by whom the back pay was awarded, which computation indicates that particular portions of such back pay are attributable to certain definite periods of time, such computation shall be accepted as the appropriate allocation for the purposes of this paragraph.

(5) Where no computation has been made as provided in subparagraph (4) of this paragraph, and where the allocation cannot be accurately made in accordance with subparagraph (1), (2), or (3) of this paragraph, then the back pay shall be allocated to each of the taxable years within which falls one or more calendar months included within the entire period for which such back pay has been paid, as if such back pay had been received or accrued in equal portions in each of such calendar months.

(6) An individual must compute his taxable income for any taxable year to which back pay is attributable even though he was not required to make a return for such year. Thus, all amounts properly includible in gross income for any taxable year to which back pay is attributable must be included in the computation.

(d) *Computation of tax.* (1) The following computation shall be made in order to determine whether the limitation on tax prescribed in section 1303 (a) and paragraph (a) of this section applies to back pay received or accrued in the taxable year:

(i) Compute the tax for the current taxable year by including in the gross income of such year the back pay received or accrued in such year.

(ii) Compute the tax for the current taxable year without such inclusion.

(iii) Compute the tax attributable to the back pay allocated to each of the prior taxable years in accordance with paragraph (c) of this section. The amount of tax attributable to back pay in each of such prior taxable years is the difference between the tax for each year computed with the inclusion in gross income of each year of the portion of such back pay so allocated to each year and the tax for each year computed without such inclusion.

(iv) The tax for the current taxable year shall be the lesser of (*a*) the tax for the current taxable year as computed under subdivision (i) of this subparagraph, or (*b*) the tax for such year as computed under subdivision (ii) of this subparagraph, plus the aggregate of the taxes attributable to the allocated back pay as computed under subdivision (iii) of this subparagraph.

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301–2.

(3) See paragraph (d) (4) of § 1.1301–2 for the computations which are necessary when an amount of back pay is allocated to a period to which there has also been allocated other income entitled to the benefits of section 1301, 1302, 1303, 1304, or 1305.

(4) The provisions of this paragraph may be illustrated by the following example:

Example. A, an unmarried individual with no dependents, makes his returns on the cash receipts and disbursements method of accounting and on the basis of a calendar year. It is assumed that he is entitled to use and uses for the taxable years 1950, 1951, and 1954, the optional tax table provided in section 3 of the 1954 Internal Revenue Code, and Supplement T of the 1939 Internal Revenue Code. In 1954, A received adjusted gross income in the amount of $4,200, of which $1,000 constituted back pay. His tax for the calendar year 1954 on $4,200 would be $665. On $3,200 ($4,200 minus $1,000), the tax would be $467. That part of the tax for 1954 attributable to back pay is, therefore, $198 ($665 minus $467). Of the back pay, $600 was attributable to the year 1951. For such year his adjusted gross income (without such back pay) was $1,700 and his tax thereon was $192. The amount of tax which he would have paid for 1951 had he included in gross income the $600 of back pay attributable to 1951 is $302. The increase in the tax for such year would have been $110 ($302 minus $192). The remainder of the back pay, $400, was attributable to the year 1950, when his adjusted gross income (without such back pay) was $1,200, and his tax was $85. The amount of tax which he would have paid for 1950 had he included in gross income the $400 of back pay attributable to 1950 is $148. The increase in the tax for 1950 would be $63 ($148 minus $85). The aggregate of the increases of taxes for 1951 and 1950 would be $173. A's tax for the calendar year 1954 is $640 ($467 plus $173).

§ 1.1304 *Statutory provisions; compensatory damages for patent infringement.*

SEC. 1304. *Compensatory damages for patent infringement.* If an amount representing compensatory damages is received or accrued by a taxpayer during a taxable year as the result of an award in a civil action for infringement of a patent issued by the United States, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month during which such infringement occurred.

(Section 1304 as added by sec. 1, act of Aug. 11, 1955 (Pub. Law 366, 84th Cong., 69 Stat. 688))

§ 1.1304–1 *Compensatory damages for patent infringement*—(a) *Qualifications for limitation on tax.* If an amount representing compensatory damages is received or accrued by a taxpayer during a taxable year as a result of an award in a civil action for infringement of a patent issued by the United States, then the tax attributable to the inclusion of such amount in gross income for the taxable year shall not be greater than the aggregate of the increases in taxes which would have resulted if such amount had been included in gross income in equal installments for each month over the period during which such infringement occurred.

(b) *Definition of terms*—(1) *"Compensatory damages."* (i) For purposes of section 1304 and this section the term "compensatory damages" means an amount awarded pursuant to a judgment or decree by a court as the result of a civil action for infringement of a patent (or contributory infringement) which action is authorized by title 35 U. S. C. (1952 ed.) sec. 281. The term is limited to that portion of the award which represents damages to compensate the taxpayer for the actual infringement sustained. It does not include that portion of the award which represents increased damages awarded by the court over and above the amount found adequate to compensate for the infringement, attorney's fees, interest or costs. See title 35 U. S. C. (1952 ed.) secs. 284 and 285.

(ii) An amount awarded pursuant to a consent decree or judgment may be considered compensatory damages for purposes of this section.

(iii) An amount received or accrued pursuant to a settlement of the action, after a decree or judgment awarding damages to the taxpayer has been entered, may be considered as compensatory damages even though such amount is not made a part of a consent decree. In such case the taxpayer must show which portion of the amount received or accrued represents compensatory damages.

(iv) An amount received or accrued pursuant to a settlement of the action where no judgment or decree, or consent judgment or decree, is entered will not constitute compensatory damages.

(2) *"Patent issued by the United States."* The term "patent issued by the United States" means any patent issued or granted by the United States under the authority of the Commissioner of Patents pursuant to U. S. C. title 35 (1952 ed.), sec. 153. The term "patent issued by the United States" does not include a patent issued or granted by a foreign government.

(c) *Allocation of compensatory damages.* The amount representing compensatory damages is to be treated as if it had been received in equal portions in each of the calendar months (including those of the current taxable year) which fall within the period during which the court has determined the infringement to have occurred. Thus, the portion of the compensatory damages allocable to each taxable year involved in such period is an amount equal to the entire amount of compensatory damages, divided by the entire number of calendar months included within such period of infringement, and multiplied by the number of such calendar months falling within the particular taxable year.

(d) *Computation of tax.* (1) The following computation shall be made in order to determine whether the limitation on tax prescribed in section 1304 and paragraph (a) of this section applies to compensatory damages for a patent infringement received or accrued in the taxable year:

(i) Compute the tax for the current taxable year by including in the gross income of such year the amount of compensatory damages received or accrued in such year.

(ii) Compute the tax for the current taxable year without such inclusion.

(iii) Compute the tax attributable to the portion of the compensatory damages allocated to each of the taxable years in accordance with paragraph (c) of this section. The amount of tax attributable to compensatory damages in each of such years is the difference between the tax for each year computed with the inclusion in gross income of each year of the portion of such compensatory damages so allocated to each year and the tax for each year computed without such inclusion.

(iv) The tax for the current taxable year shall be the lesser of (*a*) the tax for the current taxable year as computed under subdivision (i) of this paragraph, or (*b*) the tax for such year as computed under subdivision (ii) of this subparagraph, plus the aggregate of the taxes attributable to the allocated compensatory damages as computed under subdivision (iii) of this subparagraph.

(2) For effect of allocation of income on items based on amount of income and with respect to a net operating loss or a capital loss carryover, see paragraph (d) (2) of § 1.1301–2.

(3) See paragraph (d) (4) of § 1.1301–2 for the computations which are necessary when an amount of compensatory damages is allocated to a period to which there has also been allocated other income entitled to the benefits of section 1301, 1302, 1303, 1304, or 1305.

(e) *Capital gains treatment of compensatory damages.* Section 1304 and this section are applicable to amounts considered as received from the sale or exchange of a capital asset. See section 1235 and the regulations thereunder. Whether the portion of the award allocable to each year pursuant to paragraph (c) of this section shall be considered as proceeds from the sale or exchange of a capital asset or as ordinary income shall be determined under the provisions of the internal revenue laws applicable for each such year and the regulations thereunder.

(f) *Effective date of this section.* The provisions of section 1304 and this section shall be applicable with respect to taxable years ending after August 11, 1955, but only with respect to amounts of compensatory damages received or accrued after such date as the result of awards made after such date.

(g) *Illustrations.* The provisions of section 1304 may be illustrated by the following examples:

Example (1). A, the claimant in a patent infringement action, made his return on a calendar year basis and used the cash receipts and disbursements method of accounting. On October 1, 1960, the court awarded him $72,000. Of this amount $10,000 represented legal fees, $6,000 interest, and $4,000 court costs. The balance of $52,000 represented compensatory damages. Moreover, the court found that the infringement began on June 3, 1956, and continued to the date of the award, thus covering a period of 52 calendar months. For the purpose of determining the limitation on tax under section 1304, A must allocate the amount of $52,000 of compensatory damages at the rate of $1,000 per month over the 52 calendar months as follows: $7,000 to 1956, $12,000 to 1957, $12,000 to 1958, $12,000 to 1959, and $9,000 to 1960.

Example (2). Assume the same facts as in example (1) except that on January 2, 1956, A sold or exchanged his patent to the X Company within the meaning of section 1235. For the purpose of determining the limitation on tax under section 1304, A must treat the amounts allocated to the several years as long-term capital gains.

§ 1.1305 *Statutory provisions; breach of contract damages.*

SEC. 1305. *Breach of contract damages*—(a) *General rule.* If an amount representing damages is received or accrued by a taxpayer during a taxable year as a result of an award in a civil action for breach of contract or breach of a fiduciary duty or relationship, then the tax attributable to the inclusion in gross income for the taxable year of that part of such amount which would have been received or accrued by the taxpayer in a prior taxable year or years but for the breach of contract, or breach of a fiduciary duty or relationship, shall not be greater than the aggregate of the increases in taxes which would have resulted had such part been included in gross income for such prior taxable year or years.

(b) *Credits and deductions allowed in computation of tax.* The taxpayer in computing said tax shall be entitled to deduct all credits and deductions for depletion, depreciation, and other items to which he would have been entitled, had such income been received or accrued by the taxpayer in the year during which he would have received or accrued it, except for such breach of contract or for such breach of a fiduciary duty or relationship. The credits, deductions, or other items referred to in the prior sentence, attributable to property, shall be allowed only with respect to that part of the award which represents the taxpayer's share of income from the actual operation of such property.

(c) *Limitation.* Subsection (a) shall not apply unless the amount representing damages is $3,000 or more.

(Section 1305 as added by sec. 1, act of Aug. 26, 1957 (Pub. Law 85–165, 71 Stat. 413))

§ 1.1305–1 [Reserved for regulations under section 1305]

§ 1.1306 *Statutory provisions; rules applicable to sections 1301, 1302, 1303, 1304, and 1305.*

SEC. 1306. *Rules applicable to this part*—(a) *Fractional parts of a month.* For purposes of this part, a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it should be considered as a month.

(b) *Tax on self-employment income.* This part shall be applied without regard to, and shall not affect, the tax imposed by chapter 2 relating to self-employment income.

(c) *Computation of tax attributable to income allocated to prior period.* For the purpose of computing the tax attributable to the amount of an item of gross income allocable under this part to a particular taxable year, such amount shall be considered income only of the person who would be required to include the item of gross income in a separate return filed for the taxable year in which such item was received or accrued.

(d) *Effective date of certain subsections.* Subsection (c) of section 1301 and subsection (c) of this section shall apply only to amounts received or accrued after March 1, 1954. Notwithstanding any other provision of this title, section 107 of the Internal Revenue Code of 1939 shall apply to amounts received or accrued as a partner on or before March 1, 1954, under this section and to the computation of tax on amounts received or accrued on or before March 1, 1954.

(Section 1306 as renumbered by sec. 1, act of Aug. 11, 1955 (Pub. Law 366, 84th Cong., 69 Stat. 688); sec. 1, act of Aug. 26, 1957 (Pub. Law 85-165, 71 Stat. 413))

§ 1.1306-1 *Rules applicable to sections 1301, 1302, 1303, 1304, and 1305*—(a) *Fractional parts of a month.* For purposes of sections 1301, 1302, 1303, 1304, and 1305, and the regulations thereunder, a fractional part of a month shall be disregarded unless it amounts to more than one half of a month, in which case it shall be considered as a month.

(b) *Tax on self-employment income.* The provisions of sections 1301, 1302, 1303, 1304, and 1305, and the regulations thereunder, shall be applied without regard to, and shall not affect, the tax imposed by chapter 2 of subtitle A of the Internal Revenue Code of 1954 and section 480 of the Internal Revenue Code of 1939, relating to the tax on self-employment income.

(c) *Computation of tax attributable to income allocated to prior period.* In the case of either a husband or wife receiving income to which the provisions of section 1301, 1302, 1303, 1304, or 1305 apply, the tax attributable to the portion of the income allocated to a prior period shall be computed by considering such income as includible by the spouse who would have been required to include it in a separate return for the taxable year in which such income was received or accrued, assuming a separate return had been filed for such year. For example, A, an attorney on a calendar year basis, resides in a State in which the common law with respect to the ownership of property is applicable. In 1955, A receives compensation upon the completion of an employment which began in 1945. All the requirements for the application of section 1301 (a) are satisfied. A and his wife file a joint income tax return for the taxable year 1955. They filed separate returns for the years 1945, 1946, and 1947 and joint returns in 1948 and subsequent years. The entire portion of such compensation allocable to the years for which separate returns were filed shall be includible in A's return and no part thereof shall be includible in the separate return filed by A's wife for such years.

(d) *Effective date.* Section 1304 (c) and this paragraph shall apply only to amounts received or accrued after March 1, 1954. Pursuant to section 7851 (a) (1) (C), the regulations prescribed in this paragraph shall also apply to taxable years beginning before January 1, 1954, and ending after December 31, 1953, and to taxable years beginning after December 31, 1953, and ending before August 17, 1954, although such years are generally subject to the Internal Revenue Code of 1939. Notwithstanding any other provision of the Internal Revenue Code of 1954, section 107 of the Internal Revenue Code of 1939 shall apply to amounts received or accrued on or before March 1, 1954, and to the computation of tax on amounts received or accrued on or before March 1, 1954.

[F. R. Doc. 57-10827; Filed, Dec. 30, 1957; 8:47 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 1, 17]

[Docket No. 11665]

PRACTICE AND PROCEDURE; CONSTRUCTION, MARKING AND LIGHTING OF ANTENNA STRUCTURES

EXTENSION OF TIME FOR FILING COMMENTS

In the matter of amendment of Parts 1 and 17 of the Commission's rules to encourage the grouping of antenna towers and the multiple use of structures for supporting antennas, and amendment of Part 17 to provide new criteria for determining whether applications for antenna towers will require special aeronautical study.

The Commission having under consideration a petition dated December 18, 1957, filed on behalf of the Storer Broadcasting Company, requesting an extension of time in which to submit comments directed to the Commission's further notice of proposed rule making in the above-captioned matter:

It appearing that owing to the specialized nature of the subject matter and the intervening holiday season petitioner is unable to prepare and submit comments in this proceeding by December 30, 1957, the final date for submission of comments specified in the Further Notice; and

It further appearing that the public interest would be served by extending the time for reception of comments in this Docket;

It is ordered, This 24th day of December 1957, that, pursuant to authority contained in section 0.322 (b) of the Commission's rules, the time for filing comments in the above-captioned matter is hereby extended from December 30, 1957 to January 31, 1958, and that rebuttal comments may be filed within 20 days from the extended closing date for original comments.

Released: December 26, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10844; Filed, Dec. 30, 1957; 8:50 a. m.]

FEDERAL TRADE COMMISSION

[16 CFR Part 136]

[File No. 21-332]

PAINT AND VARNISH BRUSH INDUSTRY

NOTICE OF HEARING AND OF OPPORTUNITY TO PRESENT VIEWS, SUGGESTIONS, OR OBJECTIONS

In the matter of proposed trade practice rules for the Paint and Varnish Brush Industry superseding trade practice rules for the Paint and Varnish Brush Manufacturing Industry (16 CFR Part 136).

Opportunity is hereby extended by the Federal Trade Commission to any and all persons, firms, corporations, organizations, or other parties, affected by or having an interest in the proposed trade practice rules for the Paint and Varnish Brush Industry (superseding trade practice rules for the Paint and Varnish Brush Manufacturing Industry promulgated January 14, 1939), to present to the Commission their views concerning said rules, including such pertinent information, suggestions, or objections as they may desire to submit, and to be heard in the premises. For this purpose they may obtain copies of the proposed rules upon request to the Commission. Such views, information, suggestions, or objections may be submitted by letter, memorandum, brief, or other communication, to be filed with the Commission not later than January 16, 1958. Opportunity to be heard orally in the matter will be afforded at the hearing commencing 10:00 a. m. (e. s. t.), January 16, 1958, in the Washington Room of the Hotel Statler, 7th Avenue and 33rd Street, New York, N. Y., to any such persons, firms, corporations, organizations, or other parties, who desire to appear and be heard. After due consideration of all matters presented in writing or orally, the Commission will proceed to final action on the proposed rules.

The industry for which trade practice rules are sought to be established through this proceeding consists of persons, firms, corporations, and organizations engaged in the manufacture, sale or distribution of all types and kinds of brushes for use in applying paint, varnish, lacquer, calcimine, wallpaper or other decorative or protective coatings or primers or undercoating for such coatings. Also non-wire brushes for use in dusting or cleaning surfaces preliminary to the application of such coatings or undercoatings.

Proceedings looking to the promulgation of trade practice rules for this industry were instituted by the Commission pursuant to an industry application. The announced hearing constitutes the first step in the proceedings to revise previously promulgated trade practice rules.

Issued: December 26, 1957.

By direction of the Commission.

[SEAL] ROBERT M. PARRISH,
Secretary.

[F. R. Doc. 57-10820; Filed, Dec. 30, 1957; 8:47 a. m.]

NOTICES

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Treasury Dept. Order 147, Revision 1]

OFFICE OF THE ASSISTANT TO THE SECRETARY FOR LAW ENFORCEMENT

ESTABLISHMENT

1. There is established in the Office of the Secretary the Office of Assistant to the Secretary for Law Enforcement.

2. The Office shall be headed by an Assistant to the Secretary for Law Enforcement, who shall report to me through the Assistant or Under Secretary who has supervisory responsibility for Treasury law enforcement operations.

3. The functions of the Office of the Assistant to the Secretary for Law Enforcement shall in general be, but shall not be limited to:

a. Formulation, for recommendation to the Secretary of the Treasury, of the basic law enforcement program and policy for execution of the Treasury Department's national and international law enforcement responsibilities.

b. Representation of the Office of the Secretary in operational aspects of all Treasury law enforcement activities.

c. Chairmanship of the Treasury Department Enforcement Board. This Board shall consist of the following officials: Administrative Assistant Secretary of the Treasury; Commissioner, Bureau of Narcotics; Chief, U. S. Secret Service; Director, Alcohol and Tobacco Tax Division, Internal Revenue Service; Deputy Commissioner (Investigations), Bureau of Customs; Director, Intelligence Division, Internal Revenue Service; Director, Internal Security Division (Inspection), Internal Revenue Service; and Chief, Intelligence Division, U. S. Coast Guard. Each of the Board members shall designate an alternate who will serve in his absence. The Board shall have the mission of appraising, improving, and developing crime suppression activities and techniques and, in addition, controlling and reducing the cost of enforcement operation and improving the management of enforcement activities.

d. Responsibility for the coordination of Treasury law enforcement activities.

e. Liaison representation of the Office of the Secretary with all other Federal and international law enforcement agencies on all major law enforcement problems.

f. Appraisal, for consideration of the Secretary, of the policy, performance and integrity of Treasury enforcement activities.

g. Direction of Treasury enforcement training.

4. The detailed organization and specific missions of the Office may be itemized and modified from time to time by the Assistant or Under Secretary who has supervisory responsibility for Treasury law enforcement operations, in order to accomplish the foregoing functions with maximum effectiveness.

5. In effectuating this order, I hereby direct the Assistant or Under Secretary who has supervisory responsibility for Treasury law enforcement operations to draw on all facilities of the Department without limitation, except as to restrictions imposed by law.

Dated: December 23, 1957.

[SEAL] ROBERT B. ANDERSON,
Secretary of the Treasury.

[F. R. Doc. 57-10828; Filed, Dec. 30, 1957; 8:47 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

PENNSYLVANIA

DESIGNATION OF AREA FOR PRODUCTION EMERGENCY LOANS

For the purpose of making production emergency loans pursuant to section 2 (a) of Public Law 38, 81st Congress (12 U. S. C. 1148a-2 (a)), as amended, it has been determined that in the following counties in the State of Pennsylvania a production disaster has caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

PENNSYLVANIA

Berks.	Montgomery.
Greene.	Washington.
Monroe.	

Pursuant to the authority set forth above, production emergency loans will not be made in the above-named counties after December 31, 1958, except to applicants who previously received such assistance and who can qualify under established policies and procedures.

Done at Washington, D. C., this 26th day of December 1957.

[SEAL] TRUE D. MORSE,
Acting Secretary.

[F. R. Doc. 57-10858; Filed, Dec. 30, 1957; 8:52 a. m.]

ATOMIC ENERGY COMMISSION

[Docket F-21]

PROSPERITY CO.

NOTICE OF DENIAL WITHOUT PREJUDICE OF FACILITY LICENSE APPLICATION

Please take notice that the Atomic Energy Commission on December 20, 1957, denied the application for a facility license submitted by The Prosperity Company, 125 Marcellus Street, Syracuse, New York. The denial was made with the consent of the applicant and without prejudice to submittal of a new application. The Prosperity Company submitted its application for license on February 6, 1956, to construct and operate a research reactor on the campus of the University of Miami, Coral Gables, Florida. For further details see the application for license at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C.

Dated at Washington, D. C., this 20th day of December 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57-10794; Filed, Dec. 30, 1957; 8:45 a. m.]

[Docket Nos. 50-92, 50-93]

AEROJET—GENERAL NUCLEONICS

NOTICE OF PROPOSED ISSUANCE OF FACILITY EXPORT LICENSE

Please take notice that Aerojet-General Nucleonics, San Ramon, California, on December 9, 1957, filed two applications each requesting a license authorizing the export of a research reactor to The Government of Belgium for exhibition at the 1958 World's Fair in Brussels. One application (Docket 50-92) is for license to export a 100-milliwatt research reactor and the other (Docket 50-93) a one-watt research reactor. The applicant states that it plans to export only one of the reactors, that the Belgian Government has not yet decided which of the two reactors is to be exhibited, and that the two applications have been submitted in order to avoid unnecessary delay in shipment of the reactor finally chosen. Upon finding that (a) the reactor designated to be exported is a utilization facility as defined in the Atomic Energy Act of 1954, as amended, and in the Commission's regulations (10 CFR Part 50) and (b) the issuance of a license authorizing the export thereof is within the scope of and is consistent with the terms of an agreement for cooperation with The Government of Belgium, the Commission will issue a facility export license authorizing the export of the reactor to the International Science Hall in Brussels.

In its review of applications for licenses sought solely to authorize the export of production or utilization facilities, the Commission does not evaluate the health and safety characteristics of the subject reactors.

In accordance with the procedures set forth in the Commission's rules of practice (10 CFR Part 2) a petition for leave to intervene in these proceedings must be served upon the parties and filed with the Atomic Energy Commission within 30 days after the filing of this notice with the Federal Register Division.

For the Atomic Energy Commission.

Dated at Washington, D. C., this 23d day of December 1957.

H. L. PRICE,
Director,
Division of Civilian Application.

[F. R. Doc. 57-10795; Filed, Dec. 30, 1957; 8:45 a. m.]

[Docket No. F–14]

BATTELLE MEMORIAL INSTITUTE

NOTICE OF PROPOSED ISSUANCE OF FACILITY LICENSE

Please take notice that the Atomic Energy Commission proposes to issue a facility license to Battelle Memorial Institute substantially in the form set forth below unless within fifteen (15) days after filing of this notice with the Federal Register Division a request for a formal hearing is filed with the Commission in the manner prescribed by § 2.102 (b) of the Commission's rules of practice (10 CFR Part 2). The proposed license would authorize Battelle Memorial Institute to possess the critical assembly facility at the site near Columbus, Ohio, described in its application for license. Construction of the facility was authorized by Construction Permit No. CPCX–2 issued on December 28, 1955. The facility has been inspected by representatives of the Commission and found to have been constructed in accordance with the terms and conditions of the construction permit. The proposed license provides that at such time as it is amended to authorize the operation of the facility such amended license will incorporate—as one of its conditions—a requirement that no critical experiment may be conducted in the facility until a description of the experiment and a hazards evaluation report shall have been submitted to the Commission and the Commission shall have specifically authorized the experimental activity. For further details see the application for license at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C.

Dated at Washington, D. C., this 20th day of December 1957.

For the Atomic Energy Commission.

H. L. PRICE,
Director,
Division of Civilian Application.

LICENSE

License No.

1. On October 20, 1955, Battelle Memorial Institute filed an application for a Class 104 license to construct, possess and operate a critical experiment facility (hereinafter "the facility") at its West Jefferson site near Columbus, Ohio. The original application and amendments thereto are hereinafter referred to as "the application". On December 28, 1955, the Atomic Energy Commission (hereinafter "the Commission") issued Construction Permit No. CPCX–2 authorizing construction of the facility described in the application. Representatives of the Commission have inspected the facility and found it to have been constructed in compliance with the terms and conditions of the construction permit.

2. The Commission finds that:

a. The facility authorized for construction by Construction Permit No. CPCX–2, dated December 28, 1955, and issued to Battelle Memorial Institute, has been constructed in conformity with the Atomic Energy Act of 1954, as amended, and the rules and regulations of the Commission; and

b. Issuance of a license to possess the facility will not be inimical to the common defense and security or to the health and safety of the public.

3. Subject to the conditions and requirements incorporated herein, the Commission hereby licenses Battelle Memorial Institute pursuant to section 104 (c) of the Atomic Energy Act of 1954, as amended, and Title 10, CFR, Chapter I, Part 50, "Licensing of Production and Utilization Facilities," to possess the facility as a utilization facility.

4. This license shall be deemed to contain and be subject to the conditions specified in § 50.54 of Part 50; is subject to all applicable provisions of the Atomic Energy Act of 1954, as amended and rules, regulations and orders of the Commission now or hereafter in effect.

5. At such time as this license is amended to authorize the operation of the facility such amended license will incorporate—as one of its conditions—a requirement that no critical experiment may be conducted in the facility until a description of the experiment and a hazards evaluation report shall have been submitted to the Commission and the Commission shall have specifically authorized the experimental activity.

6. This license is effective as of the date of issuance and shall expire at midnight December 28, 1965.

Date of Issuance:

For the Atomic Energy Commission.

———,
Director,
Division of Civilian Application.

[F. R. Doc. 57–10796; Filed, Dec. 30, 1957; 8:45 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 11972; FCC 57M–1290]

AMERICAN TELEPHONE AND TELEGRAPH CO. ET AL.

ORDER SCHEDULING HEARING

In the matter of American Telephone and Telegraph Company et al., Docket No. 11972; lease and maintenance of equipment and facilities for private communication systems.

The Hearing Examiner having under consideration a Motion to Designate Hearing Date filed December 13, 1957, on behalf of the Chief, Common Carrier Bureau, requesting that the hearing be scheduled for January 14, 1958; and

It appearing that the Washington attorneys for various parties have informally agreed to the above hearing date, that the public interest requires prompt action to establish a firm hearing date in this multi-party proceeding, and that a grant of the motion will best conduce to the proper dispatch of business; now therefore,

It is ordered, This 20th day of December 1957, that the above motion is granted, and that the hearing in this proceeding shall be commenced at 10:00 a. m. on Tuesday, January 14, 1958, at the offices of the Commission in Washington, D. C.

Released: December 23, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57–10845; Filed, Dec. 30, 1957; 8:50 a. m.]

[Docket No. 12104 etc.; FCC 57M–1299]

RALPH D. EPPERSON ET AL.

ORDER SCHEDULING FURTHER PREHEARING CONFERENCE

In re applications of Ralph D. Epperson, Williamsburg, Virginia, Docket No. 12104, File No. BP–10958; Mary Cobb & Richard S. Cobb, d/b as Williamsburg Broadcasting Company, Williamsburg, Virginia, Docket No. 12105; File No. BP–11199; WDDY, Incorporated (WDDY), Gloucester, Virginia, Docket No. 12271, File No. BP–11508; for construction permits.

It is ordered, This 23d day of December 1957, that a further prehearing conference in the above-entitled matter will be held at 10:00 a. m., January 13, 1958, in the Commission's offices at Washington, D. C.

Released: December 24, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57–10846; Filed, Dec. 30, 1957; 8:50 a. m.]

[Docket No. 12226; FCC 57M–1296]

CAPITOL BROADCASTING CORP. (WCAW)

ORDER CONTINUING HEARING

In re application of Capitol Broadcasting Corporation (WCAW), Charleston, West Virginia, Docket No. 12226, File No. BP–11094; for construction permit.

On the oral request of all counsel: *It is ordered,* This 23d day of December 1957, that the hearing now scheduled for January 2, 1958, is continued; and

It is further ordered, On the Hearing Examiner's own motion, that a new date for hearing will be set by subsequent order.

Released: December 24, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57–10847; Filed, Dec. 30, 1957; 8:51 a. m.]

[Docket No. 12235, 12236; FCC 57M–1297]

LOUISIANA PURCHASE CO. AND SIGNAL HILL TELECASTING CORP.

ORDER CONTINUING HEARING

In re applications of Louisiana Purchase Company, St. Louis, Missouri, Docket No. 12235, File No. BPCT–2295; for construction permit for a new television broadcast station; and Signal Hill Telecasting Corporation, St. Louis, Missouri, Docket No. 12236, File No. BMPCT–4615; for modification of construction permit.

It is ordered, This 23d day of December 1957, on the Hearing Examiner's own motion, that the prehearing conference

now scheduled for January 10, 1958, is indefinitely continued.

Released: December 24, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10848; Filed, Dec. 30, 1957; 8:51 a. m.]

[Docket No. 12272; FCC 57M-1293]

JAMES A. SAUNDERS AND WILLIAM F. JOHNS, JR.

ORDER SCHEDULING HEARING

In re application of James A. Saunders (transferor) and William F. Johns, Jr., (transferee), Docket No. 12272, File No. BTC-2611; for transfer of control of Ware Broadcasting Corporation licensee of Station KIHO, Sioux Falls, South Dakota.

It is ordered, this 20th day of December 1957, that J. D. Bond will preside at the hearing in the above-entitled proceeding which is hereby scheduled to commence on February 10, 1958, in Washington, D. C.

Released: December 23, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10851; Filed, Dec. 30, 1957; 8:51 a. m.]

[Docket No. 12250; FCC 57M-1298]

SACRAMENTO TELECASTERS, INC. (KBET-TV)

ORDER CONTINUING HEARING

In re application of Sacramento Telecasters, Inc. (KBET-TV), Sacramento, California, Docket No. 12250, File No. BMPCT-2633; for modification of construction permit.

It is ordered, This 23d day of December 1957, on the Hearing Examiner's own motion, that the hearing now scheduled for January 16, 1958, is continued indefinitely.

Released: December 24, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10850; Filed, Dec. 30, 1957; 8:51 a. m.]

[Mexican List 206]

MEXICAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES, AND CORRECTIONS IN ASSIGNMENTS

NOVEMBER 25, 1957.

Notification under the provisions of part III, section 2 of the North American regional broadcasting agreement.

List of changes, proposed changes, and corrections in assignments of Mexican Broadcast Stations modifying the appendix containing assignment of Mexican Broadcast Stations attached to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

Call letters	Location	Power, kw	Antenna	Schedule	Class	Probable date of change or commencement of operation
		690 kilocycles				
XEAK	Tijuana, Baja California (change in call letters from XEAC).	50 kw	DA-N	U	I-B	Nov. 25, 1957
		960 kilocycles				
XEK	Nuevo Laredo, Tamaulipas (change in call letters from XEDF).	5 kw D/1 kw N	DA-1	U	III	Do.
		970 kilocycles				
XEDF	Mexico, D. F. (change in call letters from XEK).	1 kw D/500 w N	ND	U	III	Do.
		1310 kilocycles				
XEBP	Torreon, Coahuila (reduce daytime power).	250 w N/5 kw D	ND	U	III	Do.

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10853; Filed, Dec. 30, 1957; 8:52 a. m.]

[Docket Nos. 12244-12246; FCC 57M-1300]

SANTA ROSA BROADCASTING CO. ET AL.

ORDER FOLLOWING FIRST PREHEARING CONFERENCE (CONTINUING HEARING)

In re applications of B. Floyd Farr, George Snell, Edward W. McCleery, Robert Blum d/b as Santa Rosa Broadcasting Company, Santa Rosa, California, Docket No. 12244, File No. BP-10676; Golden Valley Broadcasting Company (KRAK), Stockton, California, Docket No. 12245, File No. BP-10676; Joseph E. Gamble and Lew L. Gamble, d/b as Radio Santa Rosa, Santa Rosa, California, Docket No. 12246, File No. BP-11084; for construction permits.

It is ordered, This 23d day of December 1957, that, upon joint oral motion of all counsel made at a prehearing conference held this day in the above-entitled matter, a further prehearing conference will be held at 10:00 A. M., January 29, 1958, in the Commission's offices in Washington, D. C.; and

It is further ordered, That the hearing now scheduled for January 9, 1958, is continued without date.

Released: December 24, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10849; Filed, Dec. 30, 1957; 8:51 a. m.]

[Amdt. O-38]

STATEMENT OF ORGANIZATION, DELEGATIONS OF AUTHORITY AND OTHER INFORMATION

CHIEF, SAFETY AND SPECIAL RADIO SERVICES BUREAU

In the matter of amendment of section 0.292 of the Commission's Statement of Delegations of Authority to provide authorization for Chief of Safety and Special Radio Services Bureau to dismiss applications without prejudice under certain circumstances.

The Commission having under consideration an editorial addition to section 0.292 of Part O of its Statement of Delegations of Authority; and

It appearing that by an order adopted on April 23, 1952, 17 F. R. 4187, the Commission delegated authority to the Chiefs of the Operating Bureaus authorized to process applications to dismiss such applications without prejudice where an applicant has failed to answer official correspondence or a request for additional material from the Commission as provided in § 1.381 (a) of the Commission's rules; and

It further appearing that it is administratively convenient and in the public interest to have this delegation of authority set forth in Part O of the Commission's Statement of Delegations of Authority; and

It further appearing that the amendment adopted herein is editorial in nature, and, therefore, prior publication of Notice of Proposed Rule Making pursuant to the provisions of section 4 (a) of the Administrative Procedure Act is unnecessary, and the amendment may become effective immediately; and

It further appearing that the amendment adopted herein is issued pursuant to authority contained in sections 4 (i), 5 (d) (1), and 303 (r) of the Communications Act of 1934, as amended, and section 0.341 (a) of the Commission's Statement of Delegations of Authority;

It is ordered, This 24th day of December, 1957, that, effective immediately section 0.292 of the Commission's Statement of Delegations of Authority is amended by the addition of paragraph (h) to read as follows:

(h) To dismiss, applications without prejudice in cases where, prior to designation of such application for hearing,

an applicant has failed to answer official correspondence or a request for additional information from the Commission.

Released: December 26, 1957.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 57-10852; Filed, Dec. 30, 1957; 8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-14044]

ANDERSON-PRICHARD OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Anderson-Prichard Oil Corporation (Respondent), on November 25, and 26, 1957, tendered for filing proposed changes in presently effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notice of change, dated November 22, 1957. Notice of change, dated November 25, 1957.
Purchaser: El Paso Natural Gas Company.
Rate schedule designations: Supplement No. 1 to Anderson-Prichard Oil Corporation FPC Gas Rate Schedule No. 72. Supplement No. 6 to Anderson-Prichard Oil Corporation FPC Gas Rate Schedule No. 1.
Effective date: January 1, 1958. (Effective dates are the effective dates proposed by respondent.)

In support of the proposed increased rates, Respondent states that the periodic rate adjustments are the result of contractual provisions with El Paso negotiated at arm's length, that such provisions afford Respondent protection against increases in operating costs, and that denial of such increases would deprive Respondent of its right to just and reasonable rates. Such general conclusionary statements are insufficient to demonstrate, per se, the lawfulness of the increased rates. Union Oil Company, 16 F. P. C. 100.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the aforesaid supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10800; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14056]

SINCLAIR OIL AND GAS CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 23, 1957.

Sinclair Oil and Gas Company (Respondent), on November 25, 1957 tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of changes, dated November 21, 1957.
Purchaser: Lone Star Gas Company.
Rate schedule designation: (1) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 30. (2) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 29.
Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

In support of the proposed periodic rate increases, Respondent states that the proposed increases will not result in an excessive rate of return and will assist in obtaining a return commensurate with the risks inherent in exploration, development and production of natural gas.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10801; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14059]

STANDARD OIL COMPANY OF TEXAS

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Standard Oil Company of Texas (Respondent), on November 25, 1957, tendered for filing a proposed change in its rate schedule presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, undated.
Purchaser: El Paso Natural Gas Company.
Rate schedule desgination: Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 28.
Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

The proposed change in rate is a favored-nations increase based upon a spiral escalation increase of another seller. In support of the increase, Respondent cites the contract provisions and claims that the increase is a part of the whole contract rate and is not a change in rate.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10802; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14060]

SINCLAIR OIL & GAS CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 23, 1957.

Sinclair Oil & Gas Company (Respondent) on November 25, 1957 tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of changes, dated November 21, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: (1) Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 28. (2) Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 92. (3) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 13. (4) Supplement No. 7 to Respondent's FPC Gas Rate Schedule No. 7.

Effective date: December 26, 1957. (Effective date is the first day after expiration of the required thirty days' notice.)

The proposed changes in rates are favored-nations increases based upon a spiral escalation increase of another seller. In support of these increases, Respondent states that the increases will not result in an excessive rate of return and will assist in obtaining a return commensurate with the risks inherent in the exploration and production of natural gas.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10803; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14027]

BRITISH-AMERICAN OIL PRODUCING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 24, 1957.

The British-American Oil Producing Company (Respondent), on November 26, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 20, 1957.

Purchaser: Lone Star Gas Company.

Rate schedule designation: Supplement No. 1 to The British-American Oil Producing Company's FPC Gas Rate Schedule No. 11.

Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

In support of the proposed periodic rate increase, Respondent states that the increased rate is provided for in the contract which was entered into after arm's length bargaining, and that increased cost of production justifies the increased rate.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10804; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G–14051]

SIGNAL OIL AND GAS CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 24, 1957.

Signal Oil and Gas Company (Operator) (Respondent), on November 29, 1957, tendered for filing a proposed change in its rate schedule presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 27, 1957.
Purchaser: Cities Service Gas Company.
Rate schedule designation: Supplement No. 3 to Respondent's FPC Gas Rate Schedule No. 1.
Effective date: December 30, 1957. (Effective date is the first day after expiration of the required thirty days' notice.)

In support of the proposed rate increase, Respondent states that one intrastate pipeline purchasing residue gas in the same area will shortly pay an escalated price for such gas. Respondent contends that its presently effective rate, established by a certificate condition in Docket No. G–2570 was established at the then highest price for residue gas in the area in order to maintain the status quo. Respondent further claims that such status quo is now being changed by reason of the fact that the intrastate pipeline will pay an escalated price for residue gas, therefore, Respondent's proposed rate increase should be allowed as the going price in the area, especially since such rate is less than the contract price.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57–10805; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G–14054]

CLAUDE M. LANGTON

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 24, 1957.

Claude M. Langton, Trustee (Respondent), on November 29, 1957, tendered for filing a proposed change in its rate schedule presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, Undated.
Purchaser: Trunkline Gas Company.
Rate schedule designation: Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 1.
Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

In support of the proposed periodic rate increase, Respondent states that the provisions of the contract for increased rates resulted from arm's-length bargaining in good faith to allow for varying economic conditions. Respondent also contends that the proposed rate will not exceed the rate in contracts of other sellers in the area, and its disallowance would be a deprivation of property without due process of law.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57–10806; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G–14052]

DOMESTIC OIL CORP.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 24, 1957.

Domestic Oil Corporation (Respondent), on November 29, 1957, tendered for filing a proposed change in its rate schedule presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, Undated.
Purchaser: Cities Service Gas Company.
Rate schedule designation: Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 1.
Effective date: December 30, 1957. (Effective date is the first day after expiration of the required thirty days' notice.)

In support of the proposed periodic rate increase, Respondent states that the contract provision on which it is based resulted from arm's-length bargaining in good faith. Respondent further states that the proposed increase is necessary to protect against increasing costs and that the resulting rate does not exceed the current market price.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described

and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10807; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14105]

SINCLAIR OIL AND GAS COMPANY ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 24, 1957.

Sinclair Oil and Gas Company, et al. (Respondent), on November 25, 1957, tendered for filing a proposed change in its rate schedule presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 21, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 71.

Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

In support of the proposed periodic rate increase, Respondent cites the contract provision and states that the proposed increase will not result in an excessive rate of return. Respondent also states that the proposed increase will assist it in obtaining a return commensurate with its risks, and will represent a fair consideration for its commitment to the purchaser.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the Regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10808; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14049]

PURE OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 24, 1957.

The Pure Oil Company (Respondent), on November 25, 1957 tendered for filing proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, undated.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: (1) Supplement No. 5 to Respondent's FPC Gas Rate Schedule No. 1. (2) Supplement No. 7 to Respondent's FPC Gas Rate Schedule No. 28. (3) Supplement No. 1 to Respondent's FPC Gas Rate Schedule No. 28.

Effective date: January 1, 1958. (Effective date is the effective date proposed by respondent.)

In support of the proposed periodic rate increases, Respondent cites the pricing provisions of the contracts and contends that the increased prices are just and reasonable and to deny such increased rates would be unjust.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that said supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10809; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-13985]

PAUL F. BARNHART ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 23, 1957.

Paul F. Barnhart, et al. (Respondent), on December 2, 1957, tendered for filing

proposed changes in certain of its rate schedules presently in effect for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of change, dated November 15, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: (1) Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 15. (2) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 7. (3) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 8. (4) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 9. (5) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 10. (6) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 11. (7) Supplement No. 4 to Respondent's FPC Gas Rate Schedule No. 12. (8) Supplement No. 2 to Respondent's FPC Gas Rate Schedule No. 14.

Effective date: January 2, 1958, or date increase becomes effective under the appropriate rate schedule, if later (effective date is the date proposed by Respondent, or the date the increase becomes effective under the terms of the contract, whichever is later).

The foregoing designated supplements pertain to periodic increases in rates plus proportionate increases in Texas occupation taxes. Respondent has not furnished sufficient information to establish the date upon which the terms of the basic contracts providing for such increases become operative.

In support of the proposed periodic rate increases, Respondent states that they are based upon the terms of the gas sales contracts.

The increased rates and charges proposed in the aforesaid supplements, insofar as they pertain to periodic rate increases, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds:

(1) Good cause exists that Respondent submit within a reasonable time proof of the date upon which the proposed increased rates would become effective under the appropriate rate schedule.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the proposed increased rates and charges and that all of the foregoing designated supplements, insofar as they pertain to the periodic increases in rates, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Respondent shall submit proof, through agreement with the buyer or otherwise, of the date each of the proposed increased rates would have been effective under the appropriate rate schedule.

(B) Pursuant to the authority contained in sections 4, 5, 15, and 16 of the Natural Gas Act, and the Commission's general rules and regulations, a public hearing be held, upon a date to be fixed by notice from the Secretary, concerning the lawfulness of the proposed increased rates and charges, and, pending such hearing and decision thereon, the above-designated supplements, insofar as they pertain to proposed periodic rate increases, be and they hereby are suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended nor the rate schedules sought to be altered thereby shall be changed until this proceeding has been disposed of, or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10810; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14008]

PHILLIPS PETROLEUM CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Phillips Petroleum Company (Respondent), on November 25, 1957, tendered for filing proposed changes in presently effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of Change, dated November 21, 1957.

Purchaser: Lone Star Gas Company.

Rate schedule designations: Supplement No. 1 to Phillips Petroleum Company FPC Gas Rate Schedule No. 158. Supplement No. 1 to Phillips Petroleum Company FPC Gas Rate Schedule No. 157.

Effective date: January 1, 1958. (Effective dates are the effective dates proposed by Respondent.)

In support of the proposed increased rates, Respondent states that the periodic rate adjustments are provided by contractual provisions with Lone Star negotiated at arm's length. Further, Respondent alleges that the price increases are necessary, are insufficient to offset costs said to be fairly apportioned to the business, and are just, reasonable and fully supported. Proof of arm's-length bargaining is insufficient, per se, to sustain the lawfulness of increased rates, Union Oil Company, 16 F. P. C. 100.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the aforesaid supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10811; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14031]

FRANK E. KIRKPATRICK, JR.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Frank E. Kirkpatrick, Jr. (Kirkpatrick), on November 25, 1957, tendered for filing a proposed change in his presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 21, 1957.

Purchaser: Cities Service Gas Company.

Rate schedule designation: Supplement No. 2 to Kirkpatrick's FPC Gas Rate Schedule No. 1.

Effective date: December 26, 1957. (Effective date is the first day after expiration of the required thirty days' notice.)

In support of the proposed periodic rate increase, Kirkpatrick cites contract provision, arm's-length negotiations, and states the proposed rate increase provides for reasonable increase due to added costs of operation. Kirkpatrick also states that the proposed rate in-

crease is a reasonable rate for sale of gas in the community.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting.)

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10812; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14034]

CITIES SERVICE OIL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 23, 1957.

Cities Service Oil Company (Cities Service), on November 25, 1957, tendered for filing proposed changes in its presently effective rate schedules for sales of natural gas subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notices of changes, dated November 22, 1957.

Purchaser: Lone Star Gas Company.

Rate schedule designation: Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 3. Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 29. Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 9. Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 6.

Effective date: January 1, 1958. (Effective date is the effective date proposed by Cities Service.)

In support of the proposed periodic rate increases, Cities Service cites contract provision and arm's-length bargaining at time contract was negotiated, and states the rate is not unreasonable and is less than the going price for gas in the area.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 3, Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 29, Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 9, and Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 6, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rates and charges contained in Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 3, Supplement No. 1 to Cities Service's FPC Gas Rate Schedule No. 29, Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 9, and Supplement No. 2 to Cities Service's FPC Gas Rate Schedule No. 6.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred until June 1, 1958, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the periods of suspension have expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10813; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14035]

ATLANTIC REFINING CO. ET AL.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

DECEMBER 23, 1957.

The Atlantic Refining Company (Operator), et al (Respondent), on November 25, 1957, tendered for filing a proposed change in a presently effective rate schedule for sales of natural gas, subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 21, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: Supplement No. 2 to The Atlantic Refining Company (Operator), et al, FPC Gas Rate Schedule No. 10.

Effective date: January 1, 1958. (Effective date is the effective date proposed by Respondent.)

In support of the proposed increased rate, Respondent states that the periodic rate increase is the result of a provision in its basic contract with El Paso, that the contract was negotiated at arm's length, that the increased rate reflects an asserted increase in cost of production. In Union Oil Company, 16 F. P. C. 100, we expressed the view that evidence of arm's-length bargaining is insufficient, per se, to demonstrate the lawfulness of an increased rate.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has

expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10814; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14036]

ATLANTIC REFINING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGES IN RATES

DECEMBER 23, 1957.

The Atlantic Refining Company (Respondent), on November 25, 1957, tendered for filing proposed changes in presently effective rate schedules for sales of natural gas, subject to the jurisdiction of the Commission. The proposed changes, which constitute increased rates and charges, are contained in the following designated filings:

Description: Notice of change, dated November 14, 1957. Notice of change, dated November 13, 1957.

Purchaser: El Paso Natural Gas Company.

Rate schedule designations: Supplement No. 5 to The Atlantic Refining Company FPC Gas Rate Schedule No. 26. Supplement No. 14 to The Atlantic Refining Company FPC Gas Rate Schedule No. 28.

Effective date: January 1, 1958. (Effective dates are the effective date proposed by Respondent.)

In support of the proposed increased rates, Respondent states that the periodic rate adjustments are incorporated in contract provisions with El Paso (together with the related tax component), that such provisions were entered into at arm's length, and, lastly, that the increased rates reflect increases in cost of production. The mere fact that price increases are provided in contractual provisions representing the culmination of arm's-length bargaining does not, per se, demonstrate the lawfulness of the increased rates. Union Oil Company, 16 F. P. C. 100.

The increased rates and charges so proposed have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed changes, and that the aforesaid supplements to Respondent's rate schedules, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary, concerning the lawfulness of the proposed increased rates and charges contained in said supplements to Respondent's rate schedules.

(B) Pending such hearing and decision thereon, said supplements be and they are each hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplements hereby suspended, nor the rate schedules sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10815; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14037]

ATLANTIC REFINING CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

The Atlantic Refining Company (Atlantic) on November 25, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 12, 1957.

Purchaser: Cities Service Gas Company.

Rate schedule designation: Supplement No. 2 to Atlantic's FPC Gas Rate Schedule No. 163.

Effective date: December 26, 1957. (Effective date is the first day after expiration of the required thirty days' notice.)

In support of the proposed periodic rate increase, Atlantic cites basic contract provision, arm's-length bargaining at time contract was negotiated, and increased cost in production.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10816; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14039]

MONSANTO CHEMICAL CO.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATE

DECEMBER 23, 1957.

Monsanto Chemical Company (Respondent), on November 22, 1957, tendered for filing a proposed change in a presently effective rate schedule for sales of natural gas, subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, undated.

Purchaser: El Paso Natural Gas Company.

Rate schedule designation: Supplement No. 4 to Monsanto Chemical Company FPC Gas Rate Schedule No. 5.

Effective date: January 1, 1958. (Effective date is the effective date proposed by Respondent.)

In support of the proposed increased rate, Respondent states that the periodic rate adjustment is the product of its contract with El Paso, and that the price schedule of such contract is an integral part of the consideration upon which the contract is based.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly

discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10817; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14041]

KERR-McGEE OIL INDUSTRIES, INC.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Kerr-McGee Oil Industries, Inc. (Respondent), on November 25, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 22, 1957.

Purchaser: Cities Service Gas Company.

Rate schedule designation: Supplement No. 2 to Kerr-McGee's FPC Gas Rate Schedule No. 47.

Effective date: December 26, 1957. (Effective date is the effective date proposed by Respondent.)

In support of the proposed periodic rate increase, Respondent cities contract provision, arm's-length transaction, and states the price increase is not unreasonable but is fair, just and reasonable.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set forth in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10818; Filed, Dec. 30, 1957; 8:47 a. m.]

[Docket No. G-14042]

KERR-McGEE OIL INDUSTRIES, INC.

ORDER FOR HEARING AND SUSPENDING PROPOSED CHANGE IN RATES

DECEMBER 23, 1957.

Kerr-McGee Oil Industries, Inc., (Respondent), on November 25, 1957, tendered for filing a proposed change in its presently effective rate schedule for sales of natural gas subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate and charge, is contained in the following designated filing:

Description: Notice of change, dated November 22, 1957.

Purchaser: Lone Star Gas Company.

Rate schedule designation: Supplement No. 2 to Kerr-McGee's FPC Gas Rate Schedule No. 17.

Effective date: December 26, 1957. (Effective date is the effective date proposed by Respondent.)

In support of the proposed periodic rate increase, Respondent cites contract provision, arm's-length transaction, and states the price increase is not unreasonable but is fair, just and reasonable.

The increased rate and charge so proposed has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that said supplement to Respondent's rate schedule, described and designated in the first paragraph hereof, be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of the proposed increased rate and charge contained in said supplement to Respondent's rate schedule.

(B) Pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred for a period of five months from and after the "effective date" set fortn in the first paragraph hereof, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(C) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission (Commissioners Digby and Kline dissenting).

[SEAL] MICHAEL J. FARRELL,
Acting Secretary.

[F. R. Doc. 57-10819; Filed, Dec. 30, 1957; 8:47 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

ALMA STAUB-TERLINDEN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended,

notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Alma Staub-Terlinden; Seehof Meilen, Canton of Zurich, Switzerland; Claim No. 61568; Vesting Order No. 17903; $179.00 in the Treasury of the United States.

Executed at Washington, D. C., on December 19, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10829; Filed, Dec. 30, 1957; 8:48 a. m.]

HANS MEIER-SAGESSER

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Hans Meier-Sagesser, Basle, Switzerland; Claim No. 61525; Vesting Order No. 17903; $268.50 in the Treasury of the United States.

Executed at Washington, D. C., on December 19, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10830; Filed, Dec. 30, 1957; 8:49 a. m.]

HENDRIK THOMAS HORENSMA ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Cash in the Treasury of the United States as noted below and all right, title and interest of the Attorney General acquired pursuant to Vesting Order No. 18521 (16 F. R. 10097, October 3, 1951) in and to the securities described below:

Hendrik Thomas Horensma; Zutphen, Holland; L. S. Claim No. 860; $1,117.43. Cities Service Company 5/58, Debenture No. 181, in the principal amount of $500.

Dr. Ernest Grafenberg, New York, N. Y.; L. S. Claim No. 871; $4,560.00.

Mrs. Ella Tetta van Helbergen, Arnhem, Holland; Marius Frans Polak, Amsterdam, Holland; Mrs. Meta Knottenbelt, Richmond, New Zealand; L. S. Claim No. 874; Southern Pacific Company-San Francisco Terminal 4/50, Bond No. 14212, in the principal amount of $1,000.

Charles Boasson, Jerusalem, Israel; L. S. Claim No. 914; Central Pacific Railway Company 4/49, Bond No. 13341, and Norfolk & Western Railway Company 4/96, Bond No. 27877, all in the principal amount of $1,000 each; Union Pacific Railroad Company 4/47, Bonds Nos. 13274 and 14426, in the principal amount of $500 each.

Mrs. Bertha Krämer, Ralph Leo Pinto, Marcel Eli Pinto, and Alfredo Pinto, all of Santiago, Chile; L. S. Claim No. 915; Union Pacific Railroad Company 3½/71, Debentures Nos. 12030 and 18146, in the principal amount of $1,000 each.

Vesting Order No. 18521.

Executed at Washington, D. C., on December 19, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10832; Filed, Dec. 30, 1957; 8:49 a. m.]

LILLY WASSERMANN

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Lilly Wassermann; 46, Stanhope Gardens, London S. W. 7, England; Claim No. 62645; Vesting Order No. 8711; $9,328.88 in the Treasury of the United States.

Executed at Washington, D. C., on December 19, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10831; Filed, Dec. 30, 1957; 8:49 a. m.]

MRS. H. J. STERNBERG-TURK

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Mrs. H. J. Sternberg-Turk, Sao Paulo, Brazil; Claim No. 60586; Vesting Order No. 18118; $452.91 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10833; Filed, Dec. 30, 1957; 8:49 a. m.]

H. SAVRIJ

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

H. Savrij, Haarlem, The Netherlands; Claim No. 61998; Vesting Order No. 17838; $633.89 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10834; Filed, Dec. 30, 1957; 8:49 a. m.]

EDWARD HENRY SUMMERS

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Edward Henry Summers, 1730-2 Tesaki-cho, Sumiyoshi-cho, Higashinada-ku, Kobe, Japan; Claim No. 63158; Vesting Order No. 11122; $3,416.38 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10835; Filed, Dec. 30, 1957; 8:49 a. m.]

DORA EISENSTEIN ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Dora Eisenstein, 34 Rashi Street, Nahlat, Ramat-Gan, Israel; $42.90 in the Treasury of the United States.

Lili Eisenstein, 34 Rashi Street, Nahlat Ramat-Gan, Israel; $128.72 in the Treasury of the United States.

Claim No. 61476; Vesting Order No. 4646.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10836; Filed, Dec. 30, 1957; 8:50 a. m.]

ETELA KIKIC

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Etela Kikic, Subotica, Yugoslavia; Claim No. 56860; Vesting Order No. 8179; $25.00 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10837; Filed, Dec. 30, 1957; 8:50 a. m.]

RITSUKO OKADA

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Ritsuko Okada, 406 Waki mura, Kuga gun, Yamaguchi Ken, Japan; Claim No. 57884; $396.08 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10838; Filed, Dec. 30, 1957; 8:50 a. m.]

PAOLO ZANUSO ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Paolo Zanuso; $506.37 in the Treasury of the United States.

Augusto Pretto; $84.40 in the Treasury of the United States.

Alfonso Pretto; $84.40 in the Treasury of the United States.

All of Vincenza, Italy.

Antonio Zanuso, Weehawken, New Jersey; $42.20 in the Treasury of the United States.

Augusta Z. Pierguidi, Fairview, New Jersey, $42.20 in the Treasury of the United States.

Agnese Pretto, Buenos Aires, Argentina; $84.40 in the Treasury of the United States.

Claim No. 34805; Vesting Order No. 1370.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10839; Filed, Dec. 30, 1957; 8:50 a. m.]

FEDERICO PELS

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Federico Pels, Araoz 2821, 7° Dep. 16, Buenos Aires, Argentina; Claim No. 57822; An undivided one-third (⅓rd) part of that property vested by the Alien Property Custodian by Vesting Order No. 3715, filed with the Federal Register on June 2, 1944 (9 Fed. Reg. 6038), as all right, title, interest and claim of any kind or character whatsoever of Clara Stern and her legitimate descendants, names unknown, in and to the Trust created by the Will of Henrietta Friend, also known as Henriette Friend, deceased. The property is in the process of administration by the First Wisconsin Trust Company, Milwaukee, Wisconsin, acting under the judicial supervision of the County Court of Milwaukee County, Wisconsin.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10840; Filed, Dec. 30, 1957; 8:50 a. m.]

RAFFAELA SABATO ET AL.

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Raffaela Sabato, nee Bottiglieri, Toni Bottiglieri and Carolina Zoccola, individually, and as natural guardian for Michelina Bottiglieri, Maria Bottiglieri and Gigetta Bottiglieri, Salerno, Italy; Claim No. 63094; Vesting Order No. 2129; $5,282.01 in the Treasury of the United States.

Executed at Washington, D. C., on December 20, 1957.

For the Attorney General.

[SEAL] PAUL V. MYRON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 57-10841; Filed, Dec. 30, 1957; 8:50 a. m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 26, 1957.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 34376: *Substituted service—Motor and rail, N. Y., N. H., and H. R. R.* Filed by The New York, New Haven and Hartford Railroad Company, Agent (No. 205) for itself, the Belmont Trucking Company, Inc., and other interested motor carriers. Rates on freight loaded in highway trailers and transported in substituted rail service on railroad flat cars between Boston, Mass., and Harlem River, N. Y.

Grounds for relief: Motor truck competition.

FSA No. 34377: *Rice bran between points in southern territory.* Filed by O. W. South, Jr., Agent (SFA No. A3583), for interested rail carriers. Rates on rice bran, carloads between points in southern territory including Ohio and Mississippi River crossings.

Grounds for relief: Short-line distance formula, grouping, maintenance of short or weak line arbitraries.

Tariff: Supplement 12 to Agent Spaninger's tariff I. C. C. 1613.

FSA No. 34378: *Silica sand—Klondike and Pacific, Mo., to New Orleans, La.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7174), for interested rail carriers. Rates on silica sand, carloads, from Klondike and Pacific, Mo., to New Orleans, La.

Grounds for relief: Market competition.

Tariff: Supplement 129 to Agent Kratzmeir's tariff I. C. C. 4135.

FSA No. 34379: *Brick and related articles—Kanapolis, Kans., to western points.* Filed by W. J. Prueter, Agent (WTL No. A-1949), for interested rail carriers. Rates on brick and related commodities, carloads from Kanapolis, Kans., to specified points in Colorado, Minneapolis, North Dakota, and Nebraska.

Grounds for relief: Market competition, and maintenance of rates constructed on short-line distance formulas.

Tariff: Agent W. J. Prueter's tariff I. C. C. A-4221.

FSA No. 34380: *Fertilizer compounds and urea—Southwestern points to Utah and Wyoming points.* Filed by F. C. Kratzmeir, Agent (SWFB No. B-7173), for interested rail carriers. Rates on fertilizer compounds, carloads, also urea, carloads, and kindred articles, carloads from specified points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas to specified points in Utah on the Union Pacific Railroad Company.

Grounds for relief: Market competition and short-line distance formulas.

Tariff: Supplement 126 to Agent Kratzmeir's tariff I. C. C. 4136.

FSA No. 34381: *Corn husks and cobs—Between points in southern territory.* Filed by O. W. South, Jr., Agent (SFA No. A3582), for interested rail carriers. Rates on corn husks (shucks), in bags or bales, carloads; also corn cobs, ground or crushed or not ground or crushed, straight or mixed carloads between points in southern territory, including Ohio and Mississippi River crossings.

Grounds for relief: Short-line distance formula, grouping, maintenance of short or weak line arbitraries.

Tariff: Supplement 12 to Agent Spaninger's tariff I. C. C. 1613.

FSA No. 34382: *Grain and grain products—Moberly, Mo., to Lake Charles, La.* Filed by The Wabash Railroad Company (No. 23), for itself and on behalf of the Missouri Pacific Railroad Company. Rates on grain and grain products, carloads from Moberly, Mo., to Lake Charles, La., for export.

Grounds for relief: Carrier and port competition.

Tariff: Wabash Railroad Company tariff I. C. C. No. 7850.

FSA No. 34383: *Machinery—Cordele, Ga., to Charleston and Kenova, W. Va.* Filed by O. W. South, Jr., Agent (SFA No. A3584), for interested rail carriers. Rates on machinery or machines and parts thereof, carloads from Cordele, Ga., to Charleston and Kenova, W. Va.

Grounds for relief: Carrier competition and rates constructed on short-line distince formula.

Tariff: Supplement 30 to Agent Spaninger's tariff I. C. C. 1536.

By the Commission.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F. R. Doc. 57-10823; Filed, Dec. 30, 1957; 8:47 a. m.]

[Rev. S. O. 562, Amdt. 5; Taylor's I. C. C. Order 70]

MISSOURI-KANSAS-TEXAS RAILROAD CO.

DIVERSION OR REROUTING OF TRAFFIC

Upon further consideration of Taylor's I. C. C. Order No. 70 and good cause appearing therefor: *It is ordered,* That:

Taylor's I. C. C. Order No. 70 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p. m., March 31, 1958, unless otherwise modified, changed, suspended or annulled.

It is further ordered, That this amendment shall become effective at 11:59 p. m., December 31, 1957, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement, and by filing it with the Director, Division of the Federal Register.

Issued at Washington, D. C., December 20, 1957.

INTERSTATE COMMERCE COMMISSION,

[SEAL] CHARLES W. TAYLOR, *Agent.*

[F. R. Doc. 57-10821; Filed, Dec. 30, 1957; 8:47 a. m.]